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OECD Anti-Corruption Network for Eastern Europe and Central Asia

Istanbul Anti-Corruption Action Plan

Second Round of Monitoring

KAZAKHSTAN

Monitoring Report

The report was adopted at the Istanbul Anti-Corruption Action Plan plenary meeting on 29 September 2011 at the OECD Headquarters in Paris.

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Executive Summary

This report analyses progress made by the Republic of Kazakhstan in carrying out anti-corruption reforms and implementation of the recommendations, received during the country's review within the Istanbul Anti-Corruption Action Plan, since the adoption of the first round monitoring report in September 2007. The report also contains new recommendations in three areas: anti-corruption policy, criminalization of corruption and prevention of corruption.

Anti-corruption Policy

During the recent years much emphasis was put in Kazakhstan at the highest government level on the issues of combating corruption. The goal of preventing and fighting corruption was mentioned in many state policy documents, including annual addresses of the President, Strategic Development Plan of Kazakhstan till 2020.

This made possible a number of important reforms. Among other measures, Kazakhstan ratified the UN Convention against Corruption and adopted legislation to implement some of its provisions, adopted anti-corruption strategy for 2011-2015, assigned powers of a specialised anti-corruption body to the Financial Police Agency, adopted in the first reading draft law on the liability of legal persons for corruption offences.

After completion in 2010 of another anti-corruption strategy, on 31 March 2011 a new strategic document was adopted – the Sectoral Programme for the Fight against Corruption in the Republic of Kazakhstan for 2011-2015. The monitoring report welcomes approval of the new Programme, Government and institutional action plans to implement it, but points out that their objectives lack prioritisation, that there are no references to corruption surveys which would provide a picture of the most corrupt areas and reasons for that, that implementation indicators of the anti-corruption strategy and action plans are formal and inadequate. Despite a number of serious deficiencies of the new strategy its effective implementation may lead to improvement of situation with corruption in Kazakhstan.

High estimation was given to activity of the Kazakh authorities in conducting anti-corruption surveys and developing a system of rating assessment of the corruption level in state authorities. At the same time Kazakhstan is recommended to enhance the methodology of such surveys and to ensure that their results are used in planning and implementation of the anti-corruption strategies and action plans.

Public and expert councils have been set up at the state bodies of Kazakhstan, as instruments for interaction with the civil society, but their activity is often ineffective due to formal approach to consultations with the public, managing of such bodies by representatives of the authorities or domination in them of the ruling party's representatives and NGOs affiliated with it, selective approach in composing such councils.

Kazakhstan's Agency for Combating Economic and Corruption Crime (Financial Police) exercises functions of the agency in charge of co-ordination of the development and implementation of the anti-corruption policy, although legislation does not assign this function to the Agency. The Agency is also a specialised body for prevention, detection and investigation of corruption offences. It is necessary to strengthen independence guarantees of the anti-corruption body in accordance with Articles 6 and 36 of the UNCAC.

Criminalization of Corruption

Since the first round of monitoring Kazakhstan adopted two important laws, which introduced comprehensive changes in the provisions on liability for corruption offences (Law of 21 July 2007 No. 308-III and Law of 7 December 2009 No. 222-IV) and were aimed, in particular, at implementing Istanbul Action Plan recommendations. These changes criminalised bribe-taking by an official for third persons benefit and removed some inconsistencies between provisions of the Criminal Code and Code of Administrative Offences. They broadened the range of persons liable for corruption crimes by including persons exercising managerial functions in organisations, state's share in whose capital (at least 35 percent) was transferred to national holdings and other similar entities. The laws increased the number of corruption crimes for which an additional sanction of confiscation is applied. Also the Law on Counteracting to Legalisation (Laundering) of Criminal Proceeds and Financing of Terrorism was adopted and there was created the Committee on Financial Monitoring of the Ministry of Finance as a national financial intelligence unit. Besides, the Government submitted in the Parliament draft law introducing criminal liability of legal persons for corruption crimes. At the time of adoption of the second round monitoring report the draft law was adopted in the first reading in the lower chamber of the Parliament.

At the same time Kazakhstan should make further changes in the legislation to achieve full compliance with obligatory international standards in the area of criminal liability for corruption offences, in particular: to criminalise promise/proposal of a bribe, acceptance of the promise/proposal of a bribe, as well as solicitation of a bribe as complete corruption crimes in the public and private sectors; to criminalise bribe-giving and commercial bribery for the benefit of third persons, criminalise trading in influence; to define in the Criminal Code the notion of the bribe, the notion of foreign public officials in accordance with international standards; to ensure that the definition of criminal liability for money laundering related crimes be in line with international standards. Kazakhstan is also recommended to consider establishing criminal liability for illicit enrichment.

Welcoming Kazakhstan's efforts to establish corporate liability for corruption crimes, the report recommends that the adopted law provide for an effective and dissuasive liability of legal persons for corruption crimes with sanctions proportionate to the committed offence. Liability should be triggered both by commission of an offence by certain officials of the legal person and by lack of proper control by the governing bodies/persons of the legal person which resulted in commission of the corruption crime. Due to significant publicity which the initiative to introduce criminal liability of legal persons caused, Kazakh authorities are recommended to conduct additional consultations with business representatives on this issue and also to provide for a delay in the enactment of the corporate criminal liability.

Prevention of Corruption

In the area of public service integrity the legislation of Kazakhstan delineates administrative and political offices of civil service, stipulates a competitive selection to administrative positions, establishes restrictions related to acceptance of gifts. Positive are also legislative amendments made in December 2010, which, *inter alia*, introduced provisions on the conflict of interests, post-employment restrictions, duty of a civil servant to report corruption offences. In April 2011 a new version of the Code of Ethics of Civil Servants was adopted.

At the same time the report notes a number of serious deficiencies in the legal provisions on integrity in the public service: a too broad and unjustified list of political officials; lack of clear criteria for merit-based competition for administrative positions, possibility for taking such positions without

competitive selection, lack of regulation in the law of the promotion procedures which should also be merit-based; lack of clear criteria and restrictions for monetary benefits (bonuses); absence of any reforms in the area of asset declarations, which remain ineffective; inappropriate priorities of the civil service set in the Code of Ethics; not detailed enough provisions on the protection of whistleblowers; preservation of administrative liability for reporting false information on corruption. It is also recommended to disseminate among civil servants detailed guidelines on enforcement of the rules on gifts, practical guides on preventing and resolving conflict of interests, compliance with other restrictions, etc.

Concerning anti-corruption screening Kazakhstan is recommended to extend mandatory screening to cover all draft legal normative acts, including draft acts and legislative proposals of the President of Kazakhstan.

Noting significant success of Kazakhstan in simplifying regulation of business activities, the report voices concern with regard to the Law on State Control and Supervision adopted in 2011, as well as plans to adopt an Entrepreneurial (Economic) Code. It is also recommended to align legislation on administrative procedures with international standards and introduce administrative adjudication system to review claims of private persons against the public administration.

As regards the public financial control and audit Kazakhstan is recommended to separate, in line with international standards, functions of the public internal control and audit, to adopt and enforce internal audit standards, as well as to set up internal audit units in the executive power bodies and a Central Harmonisation Unit for audit standards at the Ministry of Finance. It is also necessary to adopt a separate law on the Accounting Committee – a supreme audit institution and introduce changes in the legislation to ensure institutional, functional and financial independence of the Accounting Committee.

The report takes note of the reforms in the public procurement legislation carried out in 2008 and 2010. However, it recommends to substantially reduce the number of areas exempt from the Law on Public Procurement, to provide for a competitive procurement procedure - based on the law and in line with international standards - for national holdings and other similar entities.

Existing problems in guaranteeing access to information in Kazakhstan demand adoption and implementation as soon as possible of a law on access to public information, which will comply with international standards. The report urges Kazakhstan to consider abolishing criminal liability for all crimes of libel and insult that have a strong chilling effect on the freedom of speech and investigative journalism in Kazakhstan. Until these crimes are abolished it should be ensured that these provisions are not used to suppress the freedom of speech and reporting of corruption. Kazakhstan is also recommended to take a number of measures to prevent lawsuits with excessive pecuniary claims seeking compensation of moral damages.

In the political corruption area there is no sufficient regulation in Kazakhstan of the political parties' financing. Budgetary financing is limited to parties elected in the parliament. It is necessary to ensure transparency of party finances, including during elections. State agency in charge of control over political parties' financing should be guaranteed proper independence. Kazakhstan is also recommended to strengthen integrity rules for political officials, who are not covered by the Law on the Civil Service.

A major problem is insufficient independence of the judiciary in Kazakhstan, which requires conducting a systemic and comprehensive reform. This concerns, in particular, the status, composition and procedure for formation of the Supreme Judicial Council, procedure for selection and dismissal of judges, their remuneration, disciplinary liability.

To prevent corruption and ensure integrity in the private sector Kazakhstan is recommended to establish proper systems for reporting, information disclosure, internal and external audit, financial control and transparency in the activity of national managing holdings, national companies and other similar entities, which possess significant material resources. Also the state authorities should facilitate promotion and implementation of corporate compliance programmes taking into account international standards and best practices.

Second Round of Monitoring

The Istanbul Anti-Corruption Action Plan is the sub-regional initiative of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN), it targets such countries as Azerbaijan, Armenia, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Ukraine and Uzbekistan; other ACN countries participate in its implementation as well. The implementation of the Istanbul Action Plan involves systematic and regular peer review of legal and institutional framework for fighting corruption in the targeted countries.

The review of Kazakhstan was performed in October 2005 and resulted in 34 recommendations. In the course of the first round of monitoring implementation of the recommendations was assessed and compliance ratings for each recommendation were established. The first round monitoring report was adopted in September 2007, noting that Kazakhstan was fully compliant with 3 recommendations, largely compliant with 6 recommendations, partially compliant with 18 recommendations and not compliant with 6 recommendations (1 recommendation had been deemed inapplicable). At the subsequent ACN plenary meetings Kazakhstan regularly submitted updated information on measures taken to implement the recommendations.

The questionnaire of the second round of monitoring was completed by the Government of the Republic of Kazakhstan and submitted to the OECD Secretariat on 7 February 2011. The country on-site visit (in Astana) took place on 4-8 April 2011 and included 11 focused sessions with representatives of the state authorities, including: the Presidential Administration, the Prime Minister's Office, the Parliament, the Supreme Court, the Agency for Combating Economic and Corruption Crime (Financial Police), the Civil Service Agency, the General Prosecutor's Office, the National Security Committee, the Ministry of Internal Affairs, the Ministry of Communications and Information, the Ministry of Justice, the Ministry of Finance, the Tax Committee, the Customs Committee, the Accounting Committee, the Central Election Commission.

The OECD Secretariat, with the assistance of and in collaboration with the US Embassy in the Republic of Kazakhstan, organized separate meetings with representatives of the civil society, business community and international organizations.

The Agency of the Republic of Kazakhstan for Combating Economic and Corruption Crime (Financial Police) acted as the national co-ordinating authority in Kazakhstan; co-ordination and carrying out of the monitoring on the Kazakh side was ensured by the Agency's officers Mrs. Aigul Shaimova and Mrs. Aizhana Berikbolova. The Team Leader of the monitoring group was Mr. Dmytro Kotlyar (Ukraine), the experts: Mr. Tom Annikve (Estonia), Mrs. Olga Zudova (UN Office on Drugs and Crime), Mr. Darius Matusevicius (Lithuania), and Mr. Ruslan Ryaboshapka (Ukraine). Mrs. Olga Savran co-ordinated from the OECD Secretariat.

This monitoring report was adopted at the Istanbul Action Plan plenary meeting on 29 September 2011. It contains the following updated compliance ratings of Kazakhstan (implementation ratings for the previous recommendations): **fully compliant with 8 recommendations, largely compliant with 12 recommendations, partially compliant with 11 recommendations and not compliant with 2 recommendations. Overall, out of 34 recommendations ratings were upgraded for 15 recommendations.** Besides, **17 new or updated recommendations** were included into the report. The report is published at <http://www.oecd.org/corruption/acn>.

To present and promote implementation of the results of the second round of monitoring the ACN Secretariat will organize a return mission to Kazakhstan, which will include meetings with

representatives of the state authorities, civil society, business community and international community. The Government of the Republic of Kazakhstan will be invited to provide regular updates on the measures taken to implement recommendations at the Istanbul Action Plan plenary meetings.

Country background information



Economic and social situation¹

Kazakhstan covers an area of 2.7 million sq. km. and is the ninth largest country in the world. It has a population of 16.5 million (15.4 million in 2006). The GDP amounts to USD 187 billion (more than USD 12,000 per capita PPP in 2010), and the economy grew by 7% in 2010 (estimate for 2011 – growth of 5.9%). Oil, gas, and mineral exports are key to Kazakhstan's economic success. Since 1993, Kazakhstan's extractive industries have attracted more than USD 30.7 billion in foreign investment, which represents almost 76% of the total foreign direct investment in Kazakhstan for that period. Kazakhstan has significant deposits of coal, iron ore, copper, zinc, uranium, and gold. Starting in 2004, the Government of Kazakhstan increased its take of oil deals by increasing taxation of new oil projects. In 2000 a National Fund of Kazakhstan was set up; the Fund is formed by contributions of oil sector organizations and its size as of 1 September 2011 was USD 38.5 billion.²

The majority of Kazakhstanis are ethnic Kazakh; other ethnic groups include Russian, Ukrainian, Uzbek, German, and Uigur. Religions are Sunni Muslim, Russian Orthodox, Protestant, and other. Kazakhstan is a bilingual country. The Kazakh language has the status of the "state" language, while Russian is declared the "official" language.

Political structure

Kazakhstan is a constitutional republic with a strong presidency. It is divided into 14 oblasts and the two municipal districts of Almaty and Astana. Each is headed by an akim (provincial governor) appointed by the President. Municipal akims are appointed by oblast akims. The Government of Kazakhstan transferred its capital from Almaty to Astana on 10 June 1998.

President of Kazakhstan is a head of state, its highest official. Since 1990 the President of Kazakhstan is Mr. Nursultan Nazarbayev, who having received 95.5% of votes at the election on 3 April 2011 was re-elected for the fourth time to serve as the President till December 2016. According to the Kazakhstan's Constitution the same person cannot be elected as President more than twice in a row.

¹ Sources: US Department of State background notes of April 2009 (<http://www.state.gov/r/pa/ei/bgn/5487.htm>); International Monetary Fund (IMF) - World Economic Outlook October 2010 (<http://www.imf.org/external/pubs/ft/weo/2010/01/weodata/index.aspx>); Kazakhstan's Agency on Statistics: http://www.stat.kz/digital/naselsenie/2010/2011/8_2011_3-15-01-M.xls.

² Finance Ministry of Kazakhstan: <http://www.minfin.kz/index.php?uin=1294660514&lang=rus>.

This restriction does not apply to the First President of the Republic of Kazakhstan. By a special constitutional law of June 2010 Kazakhstan’s President Mr. Nazarbayev was assigned a status of the First President of the Republic of Kazakhstan – Leader of the Nation.

Kazakhstan has a bicameral Parliament, comprising a lower house (the Majilis) and an upper house (the Senate). 98 Majilis members are elected in the national voting district according to the proportional system with a 7% election threshold. Additional 9 members are elected by the Assembly of the People of Kazakhstan (a consultative and advisory body under the President of the Republic of Kazakhstan). Term of office of the Majilis members is 5 years. The Senate consists of 47 members. Two senators are elected by the legislative assemblies (maslikhats) of each of the 16 country’s main administrative units (14 oblasts and cities of Astana and Almaty). 15 more senators are appointed by the President of Kazakhstan. Term of office of the Senate members is 6 years; half of the elected senators are re-elected every 3 years. Majilis deputies and the government both have the right of legislative initiative, though the government proposes most of the draft legislation considered by the Parliament.

Elections to the lower house of the Parliament were held in August 2007; 88.4% of votes were received by the *Nur Otan* party, whose chairman is the President of Kazakhstan Mr. Nursultan Nazarbayev. Other parties failed to pass the electoral threshold. In February 2009 the constitutional law on elections was amended and a new provision was introduced, whereby in case the 7% threshold is overcome only by one party, the electoral list of the party obtaining the next highest result is also allowed to take part in the distribution of seats.

Trends in corruption

With a score of 2.6 Kazakhstan ranked 105th out of 178 countries in the 2010 Transparency International Corruption Perception Index.³ Kazakhstan’s score in 2005 was 2.6 (107th out of 158 countries), then fell to 2.1 in 2007 (150th out of 179 countries) and raised significantly in 2009 to 2.7 (120th out 180 countries). Surveys show that corruption is widely seen as a serious problem in Kazakhstan, mainly in the area of public spending.

During last several years Kazakhstan has improved its rank in various indexes on conditions for doing business (see table below, as well as Section 3.3.2. of the report), which is a result of the state policy of deregulation. According to the EBRD survey, corruption as a problem for doing business in Kazakhstan was mentioned by 21% of respondents in 2008, compared with 44% in 2005.⁴

Index, organisation	Rank of Kazakhstan	Overall number of ranked countries
"Doing Business" 2011, World Bank	59	183
Economic Freedom Index 2011, Heritage Foundation	78	179
Global Competitiveness Index 2011, World Economic Forum		
- Burden of government regulation	73	139
- Property rights	131	139
- Transparency of government policymaking	75	139
- Burden of customs procedures	107	139
International Property Rights Index 2011	100	129

³ Source: <http://www.transparency.org/content/download/55725/890310>.

⁴ EBRD Business Environment and Enterprise Performance Survey 2010, http://siteresources.worldbank.org/INTECAREGTOPANTCOR/Resources/704589-1267561320871/Kazakhstan_2010.pdf.

1. Anti-corruption policy

1.1.-1.2. Political will and anti-corruption policy

1.1. Political will to fight corruption

During the recent years much emphasis was put at the highest level on the issues of combating corruption in Kazakhstan. Resolution of this problem was named as one of the priorities of Kazakhstan in such important policy documents as annual address of the President of the Republic of Kazakhstan.

The country's development "Road Map" – the Strategic Plan for Development of the Republic of Kazakhstan until 2020, approved by the Decree of the President of the Republic of Kazakhstan of 1 February 2010 No. 922, envisages a complex of measures related to increasing transparency of the administrative procedures, elimination of corruption risks in the decision-making process, introduction of lobbying regulations, improvement of business environment, ensuring of openness and transparency of the state funds' spending, overcoming corruption in the education. The development strategy "Kazakhstan – 2030" also refers to the fight against corruption as a necessary pre-condition for development of Kazakhstan.

The ruling party "Nur Otan" (received 88.41% of votes during the elections to the lower chamber of the Parliament in 2007) also names fight against corruption as one of its priorities. In particular, this party developed the Programmeme for the Fight against Corruption, initiated establishment of the Republican Public Council on Anticorruption Issues. The aim of the Programme for the Fight against Corruption adopted by the party "Nur Otan" is to establish a civil movement against corruption and to expand its activities to counter corruption crimes, to ensure protection of rights and lawful interest of citizens, society and the state.

The issues of counteraction to corruption are reflected in manifestos of other political parties of the Republic of Kazakhstan, in particular, Democratic Party "Adilet", "Rukhaniyat", Kazakh Social-Democratic Party "Auyl", Communist Party of Kazakhstan.

It should be noted that the awareness by the country's leadership of the seriousness of the issue allowed implementing certain important reforms during the recent years, which were aimed, in particular, at decreasing the corruption level in the country. In this context it is necessary to mention ratification of the United Nations Convention against Corruption and adoption of the legislation aimed at implementation of the its provisions, approval of the Sectoral Programmeme for the Fight against Corruption in the Republic of Kazakhstan for 2011-2015, assignment to the Financial Police of the specialized anti-corruption agency powers, conducting of anti-corruption screening of draft legal acts, adoption in the first reading of a draft law on the liability of legal entities for corruption offences, prosecution of many high-ranking officials for corruption crimes.

On the other hand, representatives of non-governmental organizations, business community, and international organizations informed about quite serious problems with corruption in the fields of public procurement, use of subsurface resources, tax and customs services, education, problems with independence of the criminal justice authorities and courts, which are reflected in this report.

This testifies to the necessity of continued anti-corruption and other related reforms on the basis of international standards.

1.2. Anti-corruption policy

Previous Recommendation 1

At the end of the State Programme for the Fight against Corruption for 2001 – 2005 and the Action Plan conduct a comprehensive in-depth evaluation of its implementation and impact; elaborate a new programme for the next five-year term. The new Programme and Action Plan should build on the lessons learned from the current Programme, an analysis of the patterns of corruption in the country and should identify and address sectors vulnerable to corruption. It should propose focused anti-corruption measures or plans for selected institutions have a balanced approach of repressive and preventive measures and should be drafted in consultation with main stakeholders active in relevant areas (Civil Society, business environment representatives, etc.). Ensure that the adopted programme and action plan are widely disseminated within the civil service and among general public.

In September 2007 Kazakhstan was **largely** compliant with the said recommendation.

In 2010 implementation of the State Programme for the Fight against Corruption for 2006-2010 was completed⁵. The State Programme was implemented in two stages: 1st stage – 2006-2008, 2nd stage – 2009-2010. The Kazakhstan's Government Resolutions of 9 February 2006 and of 8 May 2009 approved the Plans of Actions for Implementation of the State Programme in 2006-2008 and 2009-2010 accordingly.

Based on the results of implementation of the State Programme for the Fight against Corruption for 2006-2010 there were prepared several annual reports and consolidated analytical information on implementation of the second stage of the Programme⁶. The reports contain general information on implementation of 22 tasks envisaged in the Programme. All items of the Programme are marked as completed or being implemented.

In accordance with international standards (for example, Article 5 of the UN Convention against Corruption) the effective anti-corruption strategy should be based on the analysis of experience of the previous anti-corruption programmes and research that provides an objective and comprehensive picture of the level of corruption in the country.

Therefore, based on the results of implementation of that important anti-corruption policy document there should be prepared a report, which would contain analysis of dynamics of quantitative and qualitative indicators describing the situation with corruption in Kazakhstan, as well as information on how the measures envisaged by the Programme facilitated awareness of the population on the progress and results of implementation of the Programme, participation of citizens in implementation of the Programme, popular support of the state anti-corruption policy.

According to the information provided by authorities of Kazakhstan, the Government together with Agency for Combating Economic and Corruption Crimes (Financial Police) forwarded to the

⁵ Approved by the Decree of the President of the Republic of Kazakhstan of 23 December 2005 No. 1686.

⁶ Consolidated analytical information on implementation of the second stage (2009-2010) of the State Programme for the Fight against Corruption for 2006-2010 was published on the web-site of the Agency for Combating Economic and Corruption Crimes (Financial Police). Source: <http://www.finpol.kz/rus/pr2006-2010/?cid=0&rid=8388>.

Presidential Administration a report on implementation of the whole State Programme for the Fight against Corruption for 2006-2010, covering the issues of implementation of each measure envisaged by the Programme and analyzing dynamics of quantitative and qualitative indicators describing the situation with corruption in Kazakhstan and other issues. However, the monitoring team was not provided with this document. Besides, this report was not made public. Therefore the experts do not have a possibility to get acquainted with and assess the official report on implementation of the State Programme concerning the link between outcomes of anti-corruption campaign in the framework of previous programme and the new anti-corruption strategy.

The new programme on the fight against corruption was approved by the Government on 31 March 2011 in the form of 'Sectoral Programme for the Fight against Corruption in the Republic of Kazakhstan for 2011-2015' (hereinafter – the "Sectoral Programme")⁷. The Sectoral Programme also does not specify the level of impact of the previous Programme on the situation with corruption in the Republic of Kazakhstan, positive or negative experience of its implementation. Absence of references in the Sectoral Programme to the experience of the previous Programme may point to a formal approach to the planning of anti-corruption measures aimed at formal implementation of certain measures without having in mind clear goals of anti-corruption policy, which are planned to be achieved in the future.

The Sectoral Programme also does not refer to research which would provide up-to-date information on the areas most exposed to corruption, their reasons, most wide spread corruption practices, extent of the population's participation in corruptive behaviour in general, as well as separate social groups like entrepreneurs in particular.

While, as indicated by authorities of Kazakhstan in their written comments, the new programme does contain provisions describing positive influence of the previous state programmes, the most corrupted public relations, number of detected corruption-related crimes, it should be noted that the Programme only contains general notes, without providing a clear picture of corruption and its specific features in Kazakhstan and sources of such specific characteristics of corruption.

As a consequence, the goals which are planned to be achieved in the course of implementation of the Programme, are of relatively general nature and do not reflect priority directions of anti-corruption reforms depending on the degree of the problem in one or another field. For example, while naming public procurement, use of subsurface resources, land relations and construction, tax and customs services as the most corrupt areas, the Programme neither explains the causes for corruption in these area, nor contains conceptual proposals on the state policy aimed at resolution of the problems specific for these areas. It is obvious that specific anti-corruption activities should be based on an understanding of causes of specific corruption risks. In experts' opinion, lack of clear links between causes of corruption and proposed measures can lead to a situation where the chosen measures would not bring the necessary results.

It should be noted that the Programme's structure and contents do not fully correlate with the world best practices of formulation of the state strategic instruments of anti-corruption nature. The Programme specifies four directions, in which the activities on improving the fight against corruption should be performed: 1) extension of the international co-operation and improvement of the national anti-corruption legislation; 2) increasing effectiveness of the state authorities' activities to decrease corruption risks; 3) raising anti-corruption awareness; 4) decreasing the level of the shadow economy.

⁷ The Republic of Kazakhstan Government Resolution No. 308 of 31.03.2011.

At the same time the strategies, which are considered efficient, as the major directions of anti-corruption policy determine prevention of corruption in the field of legislative, executive and judicial powers, local self-government (in particular, issues of ethics of the public service and prevention of conflicts of interests, control over assets of the public officials, transparency of administrative procedures, internal control and transparency of public finances, compliance with standards in the field of financing of political parties and elections), prosecution of corruption (proper criminal, administrative or other legislation allowing to efficiently detect and investigate crimes and to confiscate illegally obtained proceeds, specialization in the field of investigation of corruption cases and personnel training), corruption in the private sector, involvement of the civil society into the fight against corruption (especially facilitation of whistleblowing on cases of corruption and protection of whistle-blowers), international co-operation.

The plan of actions for implementation of the Programme is composed in the same way – without proper prioritization and clearly defined goals, which are planned to be achieved through implementation of these measures. It is possible that for these reasons some important issues remained outside regulation of the Sectoral Programme – for example, prevention of corruption in the judiciary, countering “political” corruption, including ensuring transparency of financing of political parties and election campaigns.

Also it should be noted that it appears not to be correct to separate such a priority as decreasing the shadow economy’s level into a standalone direction of the anti-corruption strategy. Anti-corruption reforms should be integrated into the system of other connected public reforms (administrative reform, public service reform, regulatory reform, etc.) and should not substitute them. The problem of the ‘shadow economy’ is related to the problem of corruption, however, it is not the subject-matter of anti-corruption strategy, since its resolution lies in a different, rather economic area.

One can also criticize the fact that the only target indicator of the Sectoral Programme, which would serve as the basis for evaluation of its successful implementation, is a certain rank in the Corruption Perception Index of the Transparency International. It is well known that this Index has certain limitations and cannot always adequately reflect changes in the situation with corruption in the country. It is, therefore, recommended to envisage a more complex system for assessing success of implementation of the anti-corruption programme. The possibility to meet criteria for certain objectives also raises concern, for example: satisfaction of citizens with anti-corruption policy or increasing the level of legal competence. Neither the first, nor the second indicators are capable of reflecting the situation with corruption and are strictly subjective, showing only individual perception of citizens.

As regards the implementation of the Sectoral Programme, development of the individual implementation plans by each state authority is doubtlessly a positive thing, which would allow integrating of the anticorruption measures envisaged in the Sectoral Programme into the policy being carried out by the particular state body. After adoption of the Sectoral Programme the Financial Police Agency, as a coordinating institution, sent a letter to all state authorities concerning adoption of individual action plans. Such action plans were approved and provided to the Agency by all state authorities. Establishment or assignment of relevant powers to the structural units (officials) coordinating work at the level of the state body and its regional divisions could increase effectiveness of implementation of the anti-corruption measures and plans of actions. The respective structural units (officials) could also ensure co-operation with the Agency for Combating Economic and Corruption Crimes which is responsible for implementation of the Sectoral Programme.

To sum up the above, it is important to point out that, despite some critical comments, the new strategy confirms political commitments of the state authorities in the Republic of Kazakhstan to

conduct a result-oriented anti-corruption policy, and effective implementation of the document can lead to improvement of the corruption situation in the country.

Kazakhstan is **largely** compliant with this recommendation.

Previous Recommendation 2

Design an institutional monitoring and reporting mechanism for the Programme, possibly building on the existing Presidential Commission, and ensure transparency and unrestricted participation in the monitoring process of the Civil Society in general and of associations with experience in the area of anti-corruption, as well as the private sector / business community.

In September 2007 Kazakhstan was **partially** compliant with this recommendation.

In accordance with the Sectoral Programme the Agency for Combating Economic and Corruption Crimes (Financial Police) was designated as the body responsible for implementation of the Programme. In accordance with the Regulations for Development and Monitoring of the Sectoral Programmes⁸ approved by the Government, monitoring and summarising of the analytical data regarding implementation of the Sectoral Programme is carried out by the Agency twice a year and the results are to be sent to the Ministry of Economic Development and Trade.

The report of the Agency as the body implementing the Sectoral Programme should contain, in particular: information on the executed and non- executed measures and grounds for their non-executed; information on the spent and unused allocated funds broken down by the funding source (indicating the amounts and reasons of non-use); information on the planned and actually achieved purpose indicators, indicators of the tasks' results, as well as on the reasons of failure to achieve them; analysis of collaboration between various actors participating in implementation of the document; opinions and proposals, including those related to adjustments in the sectoral programme, concerning amounts and financing sources, changes in the legislation.

In its turn the Ministry of Economic Development and Trade prepares an integrated report based on the results of monitoring of the sectoral programmes which is sent to the Government of the Republic of Kazakhstan. The general report of the Ministry of Economic Development and Trade describes:

- the results of the analysis and consolidation of the information presented in the reports (recommendations for continuing implementation of the sectoral programme, making amendments therein, developing other legal acts, taking measures to ensure timely execution of the planned measures by the responsible persons, etc.);
- recommendations of measures to be taken by the officials aimed at increase of effectiveness of execution of the planned measures and achievement of the set goals;
- proposals for adjusting the sectoral programme, as regards the amounts and financing sources, for changes in the legislation, etc.

Therefore, it should be noted that the Republic of Kazakhstan has a statutory mechanism for monitoring of implementation of the anti-corruption strategy. However, since that mechanism has not been applied to the Sectoral Programme, it is impossible to evaluate its practical effectiveness. Based on the results of six months of 2011 the Financial Police Agency prepared a report according to the above-mentioned mechanism, which was sent to the Ministry of Economic Development and Trade for further submission to the Government.

⁸ The Republic of Kazakhstan Government Resolution No. 218 of 18 March 2010

President's Decree of 2 April 2002 set up a Presidential Commission for the Fight against Corruption – a consultative and advisory body, whose task is to elaborate and adopt measures aimed at strengthening the fight against corruption. According to the Regulations on the Commission this body performs, in particular, monitoring and analysis of the situation with combating corruption. As was reported by the Kazakhstan authorities, Commission's meetings are held quarterly in accordance with the Commission's annual work. Meetings are dedicated to the most topical issues of anti-corruption, for example the following issues were considered: "On the measures taken by the financial control bodies of the Ministry of Finance to counteract corruption in the area of public procurement", "Results of work on the calculation of the ranking of corruption levels in state authorities", etc. Therefore the said Commission could be an effective monitoring body for the anti-corruption policy at the national level taking into account the high level of its representatives.

The Plan of Actions [to implement the Sectoral Programme for the Fight against Corruption in the Republic of Kazakhstan for 2011-2015] contains indicators which allow identifying the level of implementation of the particular measure. At the same time, usually such indicators are not particular changes in situation with corruption but rather formal execution of a particular action without connection to a particular result. For example, execution of the item which is called "To increase transparency of the public procurement procedures" will result in submission of the report to the Government of Kazakhstan. Almost about half of items of the Plan (28 out of 64) are completed not with a particular result but rather with a submission of information to the Government or the Presidential Administration. Such indicators do not allow to assess the quality of implementation of the relevant measures. For example, for the indicator "submission of information to the Presidential Administration" the fact of submission of such information will be sufficient, regardless of its contents. Therefore, the Action Plan can be fully completed easily by submitting reports or information but such activity will not materially affect the situation with corruption.

The state authorities of the Republic of Kazakhstan and representatives of non-governmental organizations did not provide any examples of monitoring of anti-corruption strategy or plans of actions by the civil society organizations. In general such control in the Republic of Kazakhstan is performed by the ruling party "Nur Otan" (for example, via the party control committees) and its affiliated structures. At the same time the civil society looks for cooperation with the state authorities with respect to the civil control over the state authorities' activities; however, their inquiries have not got proper attention and reaction from the Government. Whereas preparation of "shadow reports" can be an efficient civil control mechanism in the field of the state anti-corruption policy.

Kazakhstan is **partially** compliant with this recommendation.

New Recommendation 1.1. – 1.2.

- **To consider amending the Sectoral Programme for the Fight against Corruption in the Republic of Kazakhstan in 2011-2015, as well as the Plan of Actions for Implementation of the Sectoral Programme, in accordance with international standards and world best practices (as regards its structure, contents, setting clear priorities and objectives, interconnection among priorities, objectives and measures aimed at their implementation, defining clear indicators oriented at achievement of specific results) on the basis of results of monitoring of the Programme's implementation as well as studies on the situation with corruption.**
- **To ensure proper monitoring of implementation of the Sectoral Programme for the Fight against Corruption in the Republic of Kazakhstan for 2011-2015, including transparent and unrestricted participation in the monitoring process of the civil society.**
- **To ensure that results of monitoring of implementation of the Sectoral Programme for the**

Fight against Corruption in the Republic of Kazakhstan for 2011-2015 be considered at the meetings of the Presidential Commission for the Fight against Corruption with broad public coverage of the results of implementation of the Sectoral Programme and decisions taken as a result of the meetings. To engage general public representatives in the Commission's work.

1.3. Corruption surveys

Previous Recommendation 8

Continue to conduct and publish further surveys and relevant research, based on transparent, internationally comparable methodology, to obtain more precise information about the scale of corruption in the country, and in order to ascertain the true extent to which this phenomenon affects specific institutions, such as the police, judiciary, public procurement, tax and custom services, education, health system, etc.

In September 2007 Kazakhstan was **partially** compliant with that recommendation.

The activity of the state authorities of the Republic of Kazakhstan in conducting corruption surveys deserves a high evaluation.

The corruption research in the Republic of Kazakhstan is performed depending on the particular spheres of the state management or within the framework of preparation of ratings of corruption level in the state authorities. In accordance with the instruction of the State Secretary of Kazakhstan topics for corruption surveys that are conducted by the state authorities should be agreed with the Financial Police Agency.

The state authorities of the Republic of Kazakhstan informed about numerous surveys related to various aspects of anti-corruption policy performed by the state authorities. In particular, during 2008-2010 six state agencies conducted 11 sociological surveys to determine corruption level. For example, in 2009 a survey on corruption perception in the public service system was carried out, in 2010 – surveys “Corruption Diagnostics in the Ministry of Justice of the Republic of Kazakhstan” and “Corruption in the Ministry of Finance of the Republic of Kazakhstan”. Also a number of surveys were conducted in the area of local self-government: “Fight against Corruption: Opinion of the Public and Experts”, “Development of Anti-corruption Strategy for Improvement of Provision of Services for the Population through Public Services Centres” (both - in 2010). The surveys were financed from the state budget and the respective local budgets of the Republic of Kazakhstan.

The state authorities of the Republic of Kazakhstan informed that the reports on the above-mentioned surveys were sent to the Presidential Administration, while the surveys themselves were published on the official web-sites of the organizations which carried out those surveys. Besides survey results are forwarded to the Financial Police Agency, after considering which the Agency takes measures to prevent and detect corruption offences. At the same time there is no information on how the results of these researches are used in the anti-corruption policy. At least there are no references to these surveys neither in the Sectoral Programme, nor in the Plan of Actions for Implementation of the Sectoral Programme.

The Agency of the Republic of Kazakhstan for Combating Economic and Corruption Crimes together with the Presidential Commission for the Fight against Corruption, and taking into account the opinion of the interested state authorities and with participation of the Public Fund “Transparency Kazakhstan”, developed a system for assessing corruption levels in the state authorities which

consists of three independent aggregated indexes: corruption index, corruption counteraction index and corruption perception index.

Corruption index includes criteria for evaluation of corruption of a state body expressed in the number of the public officials convicted for committing corruption crimes, number of the public officials found administratively and disciplinarily liable for committing corruption offences, number of violations of the public procurement legislation.

Corruption counteraction index includes criteria for evaluation of anticorruption measures taken by a state body expressed in transparency and openness of the state body's work with the web-sites, in the extent of availability of information and services (in grades); in number of measures aimed at prevention of corruption; number of convicted persons for committing corruption crimes detected at the initiative of the state body itself among its employees; number of persons made administratively and disciplinarily liable for committing corruption offences detected at the initiative of the state body itself among its employees.

Corruption perception index is based on annual surveys conducted by the Public Funds "Strategy" and "Transparency Kazakhstan".

The Public Service Agency of Kazakhstan is the state body responsible for co-ordination of this work.

By all means the Kazakh experience in development of the uniform methodology and conducting systematic annual surveys on the level of corruption of the state authorities is positive since it allows getting a certain picture of the issue depending on the state body, including reflection of the success of anti-corruption measures taken by a certain body.

However, one could make a number of recommendations to increase applied value of such surveys by reflecting, for example, the following important indicators: frequency of contacts between the population and the state authorities in certain spheres, frequency and models of corruption practices; types of corruption benefits (money, goods, services, non-material benefits, corporate rights); persons taking part in corruption (existence of intermediaries, their status); motivation behind the selection of corruption behaviour models; nature of decisions taken in the result of corruption act; existence and types of negative reactions to extortion of a bribe or other corruption deeds, share of persons who refused to participate in corruption schemes; number of instances of whistle-blowing on corruption cases to the management or law enforcement bodies. Besides, evaluation of corruption level is based only on the narrow statutory definition of a corruption offence, while the major part of the corruption behaviour, such as 'favouritism' and 'nepotism', is not covered by the law. The private sector is not covered by the methodology either.

Therefore, the existing methodology can be improved in order to have more full, relevant and qualitative information on the situation with corruption in the country.

Concerning co-ordination and planning of corruption surveys, it is important to note that the Plan of Actions for implementation of the Sectoral Programme envisages measures to develop a uniform policy and co-ordinated surveys in the field of counteracting corruption, and also provides for establishment of the respective co-ordination centre. Such decision of the Government of the Republic of Kazakhstan is in line with Articles 5 and 6 of the United Nations Convention against Corruption. Based on the tasks of the specialized anti-corruption body specified in Article 6 of the UNCAC, it would be correct if such centre performed its activities in close co-ordination with the Agency for Combating Economic and Corruption Crimes.

Kazakhstan is **largely** compliant with this recommendation.

New Recommendation 1.3

- To develop and apply in practice a national methodology for evaluation of corruption on the basis of the respective international experience. Such methodology should cover both public and private sectors and include at least such components as the most corrupt areas, frequency and models of corruption practices, actors taking part in corruption, types of corruption benefits. To ensure regular evaluation of the corruption situation in the country based on such methodology and also to continue the practice of sectoral corruption surveys in specific, most corrupt-prone areas.
- To consider a possibility of assigning the co-ordination role in the field of evaluation of corruption situation and conducting corruption surveys to the body which is responsible for implementation of the anti-corruption strategy.

1.4. Public participation

Previous Recommendation 28

Ensure the right of non-governmental (public) associations to take part in the elaboration of normative acts; regularly involve representatives of non-governmental organizations in other projects related to the prevention and combating corruption, which are important for the society.

In September 2007 Kazakhstan was **partially** compliant with this recommendation.

Public councils have been established at the state authorities of the Republic of Kazakhstan with participation of representatives of the Parliament, civil society organizations and mass media. Public councils are consultative and advisory bodies, whose main tasks are involvement of the public in policy-making and civil control over the state authorities' activities. Moreover, there are expert councils on entrepreneurship issues at the state authorities, establishment of which is envisaged by the Law on Private Entrepreneurship (for more details see section "Integrity in Private Sector").

The idea of establishment of public councils for sure deserves the high mark. At the same time one should pay close attention to important details of how such councils are formed. Councils are established at the initiative of the state authorities by orders of their heads, which allows to directly influence the structure, size, composition of such bodies and, accordingly, the contents of work. Also the public councils (at least most of them⁹) are chaired by the heads of the state authorities (at least, the majority of the councils). This is confirmed by the statements of non-governmental organizations which were made during the meeting with the civil society institutions as well as the respective studies. Such approach draws criticism since it undermines the idea of effective co-operation between the state and civil society.

The Public Council on Anti-Corruption Issues established in 2009 is chaired by member of the Senate, the Chairperson of the Republican Public Council on Anti-Corruption Issues at the People's Democratic Party "Nur Otan". As stated by the authorities of Kazakhstan in their written comments,

⁹ For example: Public Council (PC) at the Central Election Commission is chaired by the CEC members; PC for control over police activities at the Internal Affairs Department of the Interior Ministry – by the head of this Department; PC for the protection of patients' rights at the Health Protection Ministry – by the deputy minister of health protection; PC for interaction with NGOs and private sector at the Health Protection Ministry – by the deputy minister of health protection.

the composition of the Council is open and is constantly completed with non-governmental sector representatives who express such interest.

Representatives of the civil society also informed about the positive experience of co-operation with the State: on the basis of the Memorandum of Understanding among the Government of the Republic of Kazakhstan, extractive industry companies and non-governmental organizations within the framework of the Extractive Industries Transparency Initiative (EITI) a National Council of the interested parties for EITI promotion was established. In accordance with the EITI principles the Government appoints a representative to the multilateral group, which must include a civil society representative. Civil society representatives shall independently elect their delegates to the group.

This example could be rolled out to all spheres of the state management, which would facilitate real and not formal co-operation between the state and the civil society institutions in issues of increasing transparency of the important public decision-making.

As regards the possibility of participation of the civil society in elaboration of the most important draft legal acts, it should be noted that draft laws are published on the web-site of the Ministry of Justice when they are submitted to the Ministry for review. In this case it is possible to submit comments or proposals to the suggested legislative initiatives. As for other draft legal acts the state authorities of the Republic of Kazakhstan did not provide information about obligatory public discussion of the most important draft acts.

One of the directions of co-operation with the civil society can be partnership in anti-corruption screening of draft legal acts. In the Republic of Kazakhstan anti-corruption expertise is conducted by academic institutions; practice of alternative anti-corruption screening (review) by the civil society institutions is not widespread. According to various non-governmental organizations, which have relevant experience and potential, there is no demand from the state for such type of co-operation.

It is also necessary to mention the activities of the Interdepartmental Commission for Improvement of the Legislation in Anti-corruption Area¹⁰. The Commission is a consultative and advisory body of the Government of Kazakhstan, whose main task is to analyze legislation with a view to existence of provisions creating conditions for corruption and elaboration of the respective proposals for legislative reforms. According to the information by the Kazakh authorities, the Commission's composition, besides state authorities representatives, includes also experts-academics of the criminal law, professors of the Kazakh Humanitarian Legal University, as well as representatives of the *Nur Otan* Party and National Economic Chamber "*Atameken Union*". Since the Commission does not include a sufficiently broad representation of the civil society, it is worth considering a possibility of engaging non-governmental experts in the work of that body.

The state authorities informed about active co-operation with the public with regard to development of proposals for reforming various spheres of the state policy. For example, representatives of 13 citizens' associations, including political parties, and one mass media outlet participated in elaboration of the State Programme for the Fight against Corruption in the Republic of Kazakhstan for 2011-2015 and the Plan of Actions for its Implementation as well as the Sectoral Programme of the Fight against Corruption in the Republic of Kazakhstan for 2011-2015. More than half of the participants are members of the Public Anti-Corruption Council at the Agency for Combating Economic and Corruption Crimes or connected with the ruling party *Nur Otan*. At the same time there is no information on co-operation in discussion of the draft Sectoral Programme, for example, with the Independent Anti-Corruption Council - a coalition of 25 non-governmental organizations (as

¹⁰ Established by Government of Kazakhstan Resolution No. 193 of 14 March 2007.

of May 2011)¹¹. Taking into account the possibility of selective approach in composing the public councils, one cannot exclude application of the similar approach to discussion of drafts of the most important acts too.

Official representatives of Kazakhstan argued that the previous recommendation was fully implemented. However, taking into account the above analysis, Kazakhstan is still **partially** compliant with this recommendation.

New Recommendation 1.4-1.5

- **To ensure broad involvement of the civil society organizations in development and implementation of the anti-corruption policy, having excluded selective approach towards such co-operation. To maintain dialogue with the civil society in consultations on anti-corruption policy and anti-corruption screening; to consider broadening the composition of the Interdepartmental Commission for Improvement of the Legislation in Anti-Corruption Area by inclusion of non-governmental experts. To consider introducing rules on mandatory public discussion of the most important draft legal acts with an obligation of the drafting body to publicly provide explanation in case of rejection of proposals from non-governmental organizations and other civil society institutions.**
- **To revise the ways of establishment and work of the public and expert councils in order to exclude intervention of the State into the process of nomination of delegates from non-governmental organizations into such councils. To spread into other areas positive experience of the National Council of the interested parties for the EITI promotion.**

1.5. Raising awareness and public education

Previous Recommendation 9

Continue to conduct awareness raising campaigns and organize training for the relevant public associations, public officials and the private sector about the sources and the impact of corruption, about the tools to fight against and prevent corruption, and on the rights of citizens in their interaction with public institutions.

In September 2007 Kazakhstan was **partially** compliant with this recommendation.

The state authorities of the Republic of Kazakhstan pay much attention to such important component of anti-corruption policy as forming an attitude of zero tolerance to corruption and co-operation with the civil society.

There are many activities in the Republic of Kazakhstan on carrying out campaigns aimed at forming an anticorruption worldview of the population. The state authorities of Kazakhstan provided information on carrying out in 2010 of a large-scale informational and educational action “Your ‘NO TO CORRUPTION!’ matters!”, during which, in particular, materials on the procedure for applying to the financial police bodies regarding corruption facts as well as other materials were distributed. To forge a dialogue with entrepreneurs the financial police bodies carried out open meetings with small and medium enterprises in all regions. A campaign ‘Start from yourself’ was launched and included publication of personal income declarations by the management of all state authorities. There were

¹¹ Source:

<http://www.finland.org.kz/public/default.aspx?contentid=204922&nodeid=42502&contentlan=15&culture=ru-RU>.

debates on anti-corruption topics with participation of the law enforcement bodies and members of the Majilis.

Besides, information was submitted about joint events carried out in co-operation with the civil society institutions by such state authorities as the General Prosecutor’s Office, the Ministry of Internal Affairs, the Ministry of Finance, the Ministry of Education and Science, the Ministry of Environmental Protection.

The Sectoral Programme for the Fight against Corruption in the Republic of Kazakhstan for 2011-2015 as well as the Plan of Actions for its implementation emphasize as one of the priorities “raising of the anticorruption worldview” and broadening co-operation with the civil society institutions.

Within this priority there are certain events planned, in particular, public consultations, actions, campaigns on anti-corruption topics, explanation of the state anti-corruption policy, development and introduction of anti-corruption programmes for children, pupils, students, adults, production of printing materials, audio- and video-programmes of anti-corruption character, distribution of leaflets on the proper behaviour in corruption instances, support of the civil society institutions in the course of formation of anti-corruption worldview of the population. All relevant events were properly financed.

The Agency for Combating Economic and Corruption Crimes, which is responsible for carrying out most of the relevant tasks in the plan of actions for implementation of the Sectoral Programme, is the central body in the area of engaging the public in the anti-corruption policy. The information campaigns are financed from the state budget in accordance with the Plan of Actions for Implementation of the Sectoral Programme.

At the same time the effectiveness of these measures can be increased through periodic monitoring of the campaigns’ influence on the dynamics of qualitative and quantitative characteristics of corruption. For example, what was the change in the number of citizens not accepting corruption behaviour, form of such non-acceptance of corruption (refusal from bribery or whistle-blowing to the law enforcement bodies), readiness to report corruption, attitude to whistleblowers.

Kazakhstan is **largely** compliant with this recommendation.

New Recommendation 1.5.

To carry out an evaluation of how awareness-raising campaigns influenced the dynamics of qualitative and quantitative characteristics of corruption. To use the research data during development of the strategy for further awareness-raising campaigns taking into account the pursued goals and the target audiences. To direct awareness-raising campaigns to the practical aspects of preventing and fighting corruption.

1.6. Specialized anticorruption policy and co-ordination institutions

Previous Recommendation 4

Further strengthen human and material resources and capacities of the Agency of the Republic of Kazakhstan for the Fight against Economic and Corruption Crime and ensure that within the Agency in addition to specialized anti-corruption investigators adequate additional personnel have expertise in financial control matters.

According to the first round of monitoring of September 2007 Kazakhstan was **fully** compliant with this recommendation.

Based on the Law on the Financial Police Bodies of the Republic of Kazakhstan and the Regulations on the Agency of the Republic of Kazakhstan for Combating Economic and Corruption Crimes (Financial Police)¹², the financial police has mostly features of a specialized law enforcement anti-corruption body. For example, the financial police is authorised to prevent, detect, suppress, solve and investigate corruption crimes and offences by carrying out operative activities, preliminary investigation and inquiry, administrative proceedings.

As for the role of the financial police in co-ordination of the anti-corruption policy, the above-mentioned Law and Regulations specify that one of the tasks of the Agency is to participate in development and implementation of the state policy for the fight against corruption and economic crimes. Therefore, the legislation does not vest the Agency of the Republic of Kazakhstan for Combating Economic and Corruption Crimes with authorities which are typical for preventive anti-corruption bodies in accordance with Articles 5 and 6 of the UN Convention against Corruption.

At the same time it is in fact the Agency which develops and co-ordinates anti-corruption policy. For example, the Agency was responsible for development and implementation of the State Programme for the Fight against Corruption for 2006-2010 and the Sectoral Programme for the Fight against Corruption for 2011-2015, as well as the most important draft laws on prevention of corruption. In accordance with the Sectoral Programme, the Agency is responsible for a number of measures related to the engagement of the civil society in the state anti-corruption policy, awareness-raising campaigns and anti-corruption education both in the public and private sectors. Also the Agency is the central body responsible for the international co-operation in the anti-corruption area, represents the Republic of Kazakhstan in the OECD Anti-corruption Network for Eastern Europe and Central Asia, the International Association of Anti-Corruption Authorities (IAACA).

According to the information received from the Agency's representatives, the issues of development of anti-corruption legislation, monitoring of implementation of the Sectoral Programme are assigned to the Department of Legal Support and International Co-operation, while the Department for Investigation and Prevention of Corruption Cases is responsible for co-ordination of participation of the population in the anti-corruption measures.

As for the requirements of Article 6 of the UNCAC with regard to independence of the anti-corruption body it should be noted that the Agency is not included in the Governmental structure and is directly subordinated and reports to the President of the Republic of Kazakhstan. The Agency has proper resources for carrying out efficiently its activities in compliance with the Law on the State Budget as well as the Sectoral Programme.

At the same time, international standards on anticorruption bodies independence¹³ require eliminating any forms of improper influence on the activities of such bodies. According to paragraph 15 of the Regulations on the Agency of the Republic of Kazakhstan for Combating Economic and Corruption Crimes (Financial Police), the Chairperson of the Agency is appointed and dismissed by the President of the Republic of Kazakhstan. The Regulations do not specify the motives and grounds for dismissal of the Agency's Chairperson, which makes him/her vulnerable with regard to early termination of powers. Besides that, these issues are regulated by a lower level legal act and not a

¹² Approved by the Republic of Kazakhstan President's Order No. 1557 of 21 April 2007.

¹³ See, for example, the OECD publication "Specialized Anti-Corruption Institutions: Review of Models". Source: <http://www.oecd.org/dataoecd/7/4/39971975.pdf>.

law. Also the Chairperson and his/her deputies are the political officials. The candidates for the heads of the Agency's structural units, as well as the heads of the Agency's territorial units, have to be approved by the Presidential Administration. This draws criticism for the above-mentioned reasons. Since recently the Agency reports to the Ministry of Economic Development and Trade on the progress in implementation of the Sectoral Programme for the Fight against Corruption.

New Recommendation 1.6.

- **To introduce legislative amendments aimed at assigning the powers of developing and co-ordinating anti-corruption policy to a specific state agency.**
- **To ensure compliance with Articles 6 and 36 of the UN Convention against Corruption concerning the independence of the specialised anti-corruption agency.**

1.7. International anti-corruption conventions

Previous Recommendation 10

Ratify the United Nations Convention against Corruption.

In September 2007 Kazakhstan **was not compliant** with this recommendation.

Since the first round of the OECD monitoring in 2007 Kazakhstan achieved significant progress in adhering to the major international anti-corruption instruments. The United Nations Convention against Corruption was ratified by the Law of the Republic of Kazakhstan of 4 May 2008 No. 31-IV and became effective for the Republic of Kazakhstan on 18 July 2008.

The United Nations Convention against Transnational Organized Crime (Palermo, 13 December 2000) was ratified by the Law of the Republic of Kazakhstan of 4 June 2008 No. 40-IV and became effective for Kazakhstan on 30 August 2008.

Kazakhstan ratified the Council of Europe Convention on Laundering, Seizure and Confiscation of the Proceeds from Crime (Strasbourg, 8 November 1990) by the Law of 2 May 2011 No. 431-IV.

Also since 2009 the Republic of Kazakhstan has been working on acceding to the Council of Europe Criminal Law Convention on Corruption (Strasbourg, 27 January 1999) and the Council of Europe Civil Law Convention on Corruption (Strasbourg, 4 November 1999). Kazakhstan filed an official application to join the Group of States against Corruption (GRECO) of the Council of Europe.

Kazakhstan is also a party to the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Chisinau, 7 October 2002), which was ratified by the Law of the Republic of Kazakhstan of 10 March 2004 No. 531, and the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Minsk, 22 January 1993), which was ratified by the Resolution of the Supreme Council of the Republic of Kazakhstan of 31 March 1993 No. 2055-XII¹⁴.

Kazakhstan is, therefore, **fully compliant** with the previous recommendation.

¹⁴ The Minsk Convention of 22 January 1993 and the Protocol thereto of 28 March 1997 are terminated for the Member Parties of the Chisinau Convention. However, the Minsk Convention and the Protocol thereto continue to apply to the Parties of the Chisinau Convention and the state being their participant, for which the Chisinau Convention has not become effective (paragraphs 3 and 4 of Article 120 of the Chisinau Convention).

2. Criminalization of corruption

Kazakhstan took a number of significant measures aimed at bringing the national legislation and law enforcement practice in better compliance with the United Nations Convention against Corruption and other international instruments and standards, as well as recommendations of the Istanbul Action Plan. Overall, since the first round of monitoring two important laws were adopted in Kazakhstan, which stipulated comprehensive changes in the provisions on liability for corruption offences (Law of 21 July 2007 No. 308-III and Law of 7 December 2009 No. 222-IV) and were aimed, in particular, at implementation of the Istanbul Action Plan recommendations. The monitoring group welcomes the said measures taken by Kazakhstan and aimed at implementation of the recommendations of the first round of monitoring.

According to these changes receiving of a bribe by an official for the benefit of third persons was criminalized and certain inconsistencies between the provisions of the Criminal Code and the Code of Administrative Offences were removed. The range of subjects of corruption crimes was broadened covering persons executing managerial functions in entities, in the charter capital of which state-owned share (not less than 35 percent) is transferred to the national management holdings, national holdings, national development institutes, national companies. The number of corruption crimes for which an additional sanction in the form of confiscation of property is envisaged was increased. The elements of crime “Abuse of official powers”, envisaged by Article 307 of the Criminal Code, were added with an aggravating circumstance of committing a crime in favour of the organized group or criminal community. The Criminal Procedural Code was supplemented with provisions stipulating the procedure for judicial appeal against extradition decisions. Also the law “On Counteracting Legalization (Laundering) of Crime Proceeds and Financing of Terrorism” was adopted; the Financial Monitoring Committee of the Ministry of Finance, performing functions of the national financial intelligence unit, was established.

The Government also prepared and submitted to the Parliament a draft law on criminal liability of legal entities, including liability for corruption crimes. As of the time of the second round of monitoring the draft passed the first reading in the lower chamber of the Parliament.

However, the Istanbul Action Plan recommendations were not fully implemented and the legislation needs further improvement.

2.1.-2.2. Offences and elements of offence

Relationships among administrative, criminal and other laws

Previous Recommendation 11

Review the current system of disciplinary, administrative and criminal corruption offences, harmonise and clarify relationships between violations of the Criminal Code and other relevant legislation (i.e. the Law “On the Fight Against Corruption”).

In 2007 it was found that Kazakhstan was **partially** compliant with this recommendation.

Although Kazakhstan took certain measures with a view to implement this recommendation, nevertheless, they were insufficient and the recommendation was implemented only partly.

The Law of the Republic of Kazakhstan “On the Fight against Corruption” provides for two types of corruption offences – “acts associated with corruption or creating conditions for corruption” which trigger disciplinary, administrative and criminal liability. Only several corruption offences envisaged

in the Law on the Fight against Corruption are related to illegal receipt of benefits and advantages (Article 13), although definition of “corruption” in Article 2 of the Law explicitly refers to receipt/provision of “material benefits and advantages” as an obligatory characteristic of corruption. Moreover, the provisions on liability for various offences are scattered around the Law and the liability is differentiated depending on the subjects (persons committing them). All this results in vagueness of the Law, which is especially inadmissible in issues of legal liability and may result in evasion from liability or violation of human rights.

This problem is exacerbated by the existence of similar offences in the Law on the Fight against Corruption, the Code of Administrative Offences and the Criminal Code. For example, Article 532 of the Code of Administrative Offences envisages liability for intentional non-provision or provision of incomplete, false declarations of income. This provision is correlated with paragraph 5-1 of Article 9 of the Law on the Fight against Corruption, where the characteristic of “intentionality” is given as a separator between administrative sanctions and other consequences (namely, dismissal of a person from performance of the state or equal to them functions). But in the same Article of the Law there is paragraph 6, which provides that the same act, but which is not of intentional character, committed “during the first three years after dismissal of the person from performance of the state or equal to them functions, as well as repeated commission of such actions, results in the administrative liability according to the law”. However, administrative liability is envisaged only for intentional actions; also it is not clear which actions and which persons the phrase “repeated commission” refers to.

Chapter 13 of the Criminal Code of the Republic of Kazakhstan (Articles 307-316) is called “Corruption and Other Crimes against Interests of the Civil Service and the State Management”. Note 5 to Article 307 of the Criminal Code “Abuse of official powers” provides a list of corruption crimes: which are the crimes provided by: sub-paragraph (d), paragraph 3, Article 176 (“Misappropriation or embezzlement of the entrusted someone else’s property”); sub-paragraph (d), paragraph 3, Article 177 (“Fraud”); sub-paragraph (c), paragraph 2, Article 192 (“False entrepreneurship”); sub-paragraph (a), paragraph 3, Article 193 (“Legalization of money”); sub-paragraph (a), paragraph 3, Article 209 (“Economic smuggling”); Article 307; sub-paragraph (c), paragraph 4, Article 308 (“Exceeding of powers”); Article 310 (“Illegal participation in entrepreneurial activities”); Article 311 (“Receiving a bribe”); Article 312 (“Giving a bribe”); Article 313 (“Intermediation in bribery”); Article 314 (“Forgery by an official”); Article 315 (“Inaction at service”); Article 380 (“Abuse of power, exceeding of power or inaction committed by a military serviceman”) of the Code, *“in cases of receipt of material benefits and advantages by the persons who committed such crimes”*.

Also the Criminal Code contains a separate Chapter 8 “Crimes against Interests of Service in Commercial and Other Organizations”, which consists of five articles: “Abuse of powers” (Article 228), “Abuse of powers by private notaries, private bailiffs and auditors working in audit firms” (Article 229), “Exceeding of powers by officers of private security services” (Article 230), “Commercial bribery” (Article 231) and “*Mala fide* attitude to duties” (Article 232). In fact, the majority of these offences criminalize corruption in the private sector but are not classified as “corruption crimes” according to Note 5 to Article 307 of the Criminal Code of the Republic of Kazakhstan.

There is a separate chapter (“Administrative Corruption Offences”) also in the Code of Administrative Offences of the Republic of Kazakhstan. It stipulates liability for “Violation of financial control measures” (Article 532), “Provision of illegal material remuneration by natural persons” (Article 533), “Receipt of illegal material remuneration by a person authorized to perform state functions or by a person equated to such person” (Article 533-1), “Provision of illegal material remuneration by legal entities” (Article 534), “Carrying out of illegal entrepreneurial activities and receipt of illegal proceeds by the state authorities and local self-government bodies” (Article 535), “Failure to take anti-corruption measures by the heads or responsible secretaries or other officials specified by the

President of the Republic of Kazakhstan of the state authorities” (Article 537), “Employment of persons who had committed a corruption crime before” (Article 537-1). Only part of these offences (even though they are placed in the chapter having the title “Administrative corruption offences”) are corruption offences as specified by the Law on the Fight against Corruption, since not all of them provide for transfer of material benefits.

In July 2007 the Law No. 308-III supplemented the Code of Administrative Offences with Article 533-1, the second paragraph of which contained the qualified offence of the repeated receipt of illegal remuneration and therefore came into conflict with the Note 2 to Article 311 of the Criminal Code, which drew criticism during the first round of monitoring. The Law of 7 December 2009 No. 222-IV “On Amending Certain Legislative Acts of the Republic of Kazakhstan on Issues of Further Strengthening the Fight against Corruption” abolished the second paragraph of Article 533-1 of the Code of Administrative Offences, which allowed to eliminate simultaneous criminal and administrative liability for the same act (with regard to receipt of a gift, the value of which does not exceed two monthly calculation rates, more than one time).

Kazakhstan remains **partially** compliant with this recommendation.

Previous Recommendation 12

Amend the incrimination of active and passive bribery in the Criminal Code of the Republic of Kazakhstan to meet the international standards by ensuring:

- the active and passive bribery of foreign and international public officials is fully criminalized, either - through expanding the definition of a public official or by introducing separate criminal offences;***
- the solicitation, promise and offering of a bribe, both in public and private sector, is criminalized;***
- the subject of a bribery, both in public and private sector, covers undue advantages, which include material as well as non-material benefit;***
- bribery for the benefit of third parties is criminalized.***

In 2007 Kazakhstan was **partially** compliant with this recommendation.

Promise/offer of a bribe, solicitation of a bribe, acceptance of an offer/promise of a bribe

Solicitation, promise and offer of a bribe are still not criminalized as separate completed crimes. Moreover, in point 2.2.1 of the replies to the questionnaire Kazakh authorities acknowledge that the liability for preparation for a crime (Article 24 of the Criminal Code) is applied only to grave or especially grave crimes, while not all offences of bribery are classified as grave and especially grave crimes (the first and the second paragraphs of Article 312 of the Criminal Code provide for crimes of medium gravity). Accordingly, there is no criminal liability for promise and offer of a bribe which is not a grave or especially grave crime. There are other reasons why promise and offer of a bribe should be criminalized as completed offences, namely:

- According to Article 24 of the Criminal Code liability for inchoate (incomplete) crime is applied only if the crime was not completed due to the circumstances beyond the person’s control, while in accordance with Article 30 of the Criminal Code a person shall not be liable if he voluntarily and finally refused from completing the crime, even if there was preparation for a crime or attempted crime. Thus, a person will avoid criminal liability if he refuses from his offer or promise of a bribe before receiving an unambiguous refusal from a potential bribe-taker.

- Article 56 of the Criminal Code provides for lower sanctions for incomplete crimes – the term or amount of sanction cannot exceed half (for preparation) or $\frac{3}{4}$ (for attempted crime) of the maximum term or amount of the most severe sanction envisaged by the respective article of the Special Part of the Criminal Code for the completed crime. Such ‘discount’ is disproportionate to the gravity of the offence in the form of promise or offer of a bribe (since it concerns an intentional attempt to bribe an official, which was not completed due to circumstances beyond the control of the offender).
- Effectiveness of the liability for promise or offer of a bribe – it is unnecessary to wait for completion of a crime, it is sufficient to prove the fact of promise or offer of a bribe and the respective intention rather than proving existence of intention to give a bribe which was not realised due to circumstances beyond the person’s control.
- Prosecution for promise / offer of a bribe as an incomplete crime does not cover all practical situations, for example, case of an oral promise, which will be considered as demonstration of intention to give a bribe and without performance of minimal actions, which will constitute preparation for bribery or attempted bribery, will not be punished.

According to the international standards there should also be criminal liability for the official’s acceptance of the offer / promise of a bribe as well as for the official’s request of a bribe as completed crimes. The same should apply to corruption in the private sector (commercial bribery).

Object of bribery

The object of bribery is still limited to the material benefits. Moreover, Note 5 to Article 307 of the Criminal Code, which lists corruption crimes, limits these crimes only to cases of “acceptance of material benefits and advantages by persons who committed such crimes”. Similar approach is stipulated in the Normative Resolution of the Supreme Court of Kazakhstan concerning practice of judicial application of the legislation on liability for bribery¹⁵, paragraph 2 of which provides that the object of bribe can include money, securities, material valuables, payable services provided free of charge as well as benefits giving title to property (performance of construction, repairing works; provision of health resort / travel vouchers, travel tickets; granting of loans or credit on preferential terms etc.).

Bribery in favour of third persons

The Law of the Republic of Kazakhstan of 7 December 2009 No. 222-IV amended Article 311 of the Criminal Code, whereby criminalizing receiving of a bribe by an official in favour of third persons. However, giving of a bribe in favour of third persons is still not criminalized. Likewise, bribery in favour of third persons in the private sector is not criminalized either (Article 231 of the Criminal Code, “Commercial bribery”). Accordingly, it is necessary to stipulate criminal liability for giving of a bribe in favour of third persons in the state sector as well as for the bribery in favour of third persons in the private sector.

Trading in influence¹⁶

Trading in influence is still not fully criminalized despite opposite comments of Kazakhstan given in the replies to the questionnaire of the second round monitoring. Article 307 “Abuse of official powers” and Article 308 “Exceeding of power or official powers” of the Criminal Code do not cover all elements of the crime “Trading in influence” envisaged by Article 18 of the United Nations Convention against Corruption. In particular, actions of “any other persons” not related to the

¹⁵ Normative Resolution of 22 December 1995 No. 9.

¹⁶ “Trading in influence” – Article 18 of the United Nations Convention against Corruption.

category of “persons performing state functions or persons equated to them” are not criminalized at all. “Intermediation in bribery” envisaged by Article 313 of the Criminal Code, which means action of a person, who acting under the instruction of a bribe-giver or a bribe-taker passes over the bribe (paragraph 5 of the Normative Resolution of the Supreme Court of the Republic of Kazakhstan No. 9), cannot be deemed as liability for trading in influence. Trading in influence means liability for promise/offer/transfer of illegal benefit to a person who claims that he can have illegal influence on an official, as well as request/receipt/acceptance of an offer or promise of such benefit for such influence – regardless of the fact whether such influence took place or whether such influence caused necessary results.

Illicit enrichment¹⁷

Currently in Kazakhstan there is no criminal liability for illicit enrichment. Although illicit enrichment is mentioned as a non-mandatory clause in the UN Convention against Corruption, its introduction into legislation and implementation can be an effective tool for detection and prosecution of public officials for corruption, because it is based on the objective characteristics of existence of assets / income, lawful origin of which cannot be duly explained. The elements of this crime should be formulated in such a way that the fundamental human rights to presumption of innocence and the right not to self-incriminate are not violated. For this purpose it is necessary to put on the prosecutor the burden of proving the existence of certain assets, absence of lawful sources of income, which could have explained them, criminal intent to acquire the assets, etc. (thus creating a rebuttable presumption of illicit enrichment). In case of sufficient evidence the court has the right to infer person’s guilt, in particular, from the absence of explanation of such person with regard to legality of the mentioned assets¹⁸.

Kazakhstan remain **partially** compliant with this recommendation.

Effective regret

Note 2 to Article 312 of the Criminal Code provides for release of criminal liability if the person voluntarily informed the body, which has the right to initiate a criminal case, about bribe-giving. Similar provision is contained in Note 1 to Article 231 of the Criminal Code, “Commercial bribery”.

Such wording of the provisions on effective regret calls for a number of critical remarks. Firstly, the law does not specify the term after giving a bribe during which such acknowledgement of guilt is allowed (such term should be short, since such information loses its value for the law enforcement authorities as time goes by). Secondly, the law does not specify that effective regret may take place only until the moment when the law enforcement bodies have learned about this crime from other sources, which creates conditions for abuse of such right (a person may inform about the committed crime only because it learnt that the information about the crime had been made available to the law enforcement bodies).

Provisions on effective regret are also stipulated in the General Part of the Criminal Code, Article 65, which provides that a person who committed *for the first time* a crime of minor or medium gravity, *may be* released from criminal liability, if such person after committing a crime voluntarily appeared and acknowledged his guilt, or facilitated solving the crime, or otherwise made up for damage caused by the crime. It is also provided that a person, who committed a crime of another gravity, *may be* released from criminal liability only in cases, which are explicitly stipulated by the respective

¹⁷ “Illicit enrichment” – Article 20 of the United Nations Convention against Corruption.

¹⁸ See, in particular, the case-law of the European Court of Human Rights (*Salabiaku v. France*, *Pham Hoang v. France* and others).

articles of the Special Part of the Criminal Code. Such special cases are provided in the notes to Articles 231 and 312 of the Criminal Code of the Republic of Kazakhstan. However, these notes provide that “a person *shall be* released from criminal liability, if...”, i.e. providing for an automatic release, which does not agree with Article 65 of the Criminal Code.

It should be noted that effective regret is regulated somewhat differently in the Code of Administrative Offences. The Note to Article 534 of the latter provides that criminal liability shall not apply to individuals and legal entities who provided illegal material remuneration, gifts, other material benefits, services, preferences or advantages, if such persons voluntarily informed the competent bodies thereof *within ten days*. The General Part of the Code of Administrative Offences, Article 67, which regulates release from administrative liability in case of effective regret, does not apply to cases of acknowledgement of guilt. This means that for administrative corruption offences the above-mentioned problems of obligatory/non-obligatory character of release from liability as well as absence of the maximum term, during which acknowledgement of guilty is possible, are not relevant. However, the problem of filing a statement about committed crime (even after the competent bodies have learned about that fact from other sources) still persists.

In general, the possibility of effective regret with regard to bribe-giving (illegal remuneration) may facilitate exposure of passive bribery, which, as a rule, is deemed to be more dangerous for society since it is committed by an official who was assigned state powers. However, provision of such serious “indulgence” as release from criminal liability, especially when granted automatically without obligation of the person to provide further assistance to the law enforcement bodies in the course of prosecution of the bribe-taker, will not always be justified since quite often it is the bribe-giver who initiates the crime and who evades the liability that way. In this respect the existing mechanism of effective regret is different from the release from liability in case of extortion of a bribe. Also, as indicated above, there might be an abuse of the right to acknowledge one’s guilt.

It is recommended to eliminate the above problems which do not ensure legal certainty but create conditions for abuse of effective regret in committing of administrative and criminal corruption offences.

Liability for money laundering

Previous Recommendation 13

Ensure that the offence of money laundering is criminalized in line with the international instruments and that definitions from the Criminal Code of the Republic of Kazakhstan and the Law on Combating Money Laundering and Financing of Terrorism are harmonized. Consider amending the Criminal Procedural Code, the Criminal Code and the draft Law “On Counteracting Legalization (Laundering) of Criminally Received Proceeds and Financing of Terrorism” to ensure that the definition of proceeds of crime, which are subject to confiscation, includes i) property into which proceeds of crime have been transformed or converted; ii) property with which proceed of crime have been intermingled; iii) income derived from i) and ii), as well as from proceeds of crime.

In 2007 Kazakhstan was **partially** compliant with this recommendation.

Kazakhstan took a number of important measures to improve legislation, institutions and law enforcement practice in the field of prevention of and fight against laundering of crime proceeds, including those received from corruption crimes.

On 28 August 2009 the Law No. 191-IV “On Counteracting Legalization (Laundering) of Crime Proceeds and Financing of Terrorism” (AML Law) was adopted; it became effective on 9 March 2010. The Law sets the legal framework for counteracting legalization (laundering) of the proceeds

received from crime and other illegal actions. The Law also regulates legal relations among subjects of financial monitoring, authorized body and other state authorities of Kazakhstan in the areas of prevention of / counteraction to money laundering and financing of terrorism. Even before adoption of that Law, according to the Government's Resolution of 24 April 2008 No. 387 "On Certain Issues of the Ministry of Finance" the Financial Monitoring Committee of the Ministry of Finance, as well as its territorial body – Almaty Financial Monitoring Department, were established. Government's Resolution of 30 January 2010 introduced amendments in Resolution No. 387, stipulating functions of the Financial Monitoring Committee as the authorized body in accordance with the AML Law. Such functions include, in particular, collection, processing and analysis of information on transactions subject to financial monitoring, as well as submission of information to the respective law enforcement bodies if it is reasonable to believe that the transaction is related to laundering of illegally received proceeds and/or financing of terrorism.

During the 19th Plenary Meeting of the Egmont Group of FIUs, which took place in Yerevan (Armenia) on 13 July 2011, Kazakhstan (Financial Monitoring Committee of the Ministry of Finance) was admitted as a full member in the Egmont Group.

Mutual evaluation of the Republic of Kazakhstan within the Eurasian Group on Combating Money Laundering and Financing of Terrorism (EAG) started in October 2010. The evaluation results were presented at the 14th Plenary Meeting of EAG in June 2011. Upon the results of the 14th Plenary Meeting Kazakhstan was assigned with the measures of the standard financial monitoring and received relevant expert recommendations on further improvement of the national system in the field of combating legalization (laundering) of crime proceeds and financing of terrorism. The Financial Monitoring Committee together with the respective state authorities started working on the development of the Action Plan for Implementation of these recommendations.

Nevertheless, it should be noted that the definition of legalization (laundering) of crime proceeds, which is given in the AML Law, and definition of the crime "Legalization of criminally received money and other assets", stipulated by Article 193 of the Criminal Code of the Republic of Kazakhstan, do not correspond to each other.¹⁹ Also the crime "Legalization of criminally received money and other assets", stipulated by Article 193 of the Criminal Code, do not include all elements envisaged by the UN Convention against Corruption (see the Report of the First Round of Monitoring).

Also it should be noted that according to paragraph 2 Article 3 of the AML Law the state authorities are not subject of financial monitoring and accordingly they are not obliged to inform the Financial Monitoring Committee about operations listed in Article 4 of the AML Law, including information on suspicious transactions. It appears that exclusion of the state-owned subjects from that list substantially broadens possibilities for laundering of criminally received proceeds in such subjects. The provisions of Article 18 of the AML Law, according to which its mandatory to inform the authorized body about suspicious operations, violations of the AML Law by the financial monitoring subjects, provision of data from their own informational systems at the request of the authorized body, etc. are related to state authorities, which conduct "within their competence control over respect of anti-money laundering legislation of the Republic of Kazakhstan by those submitted to financial monitoring".

¹⁹ "Carrying out of financial operations and other transactions with money or other assets, which was acquired in knowingly illegal way, as well as the use of these money or other assets for carrying out entrepreneurial or other economic activities, and financing of terrorism" (Article 193 of the Criminal Code) / "Legalization (laundering) of crime proceeds – involving of criminally received money and/or other assets into legal circulation by making transactions, as well as use of such money and/or other assets" (Article 1 of the AML Law).

As of the first round of monitoring in Kazakhstan the courts did consider any cases under Article 193 of the Criminal Code, while - according to the Kazakh side - 26 persons were found guilty under Article 193 of the Criminal Code in 2008 (out of which 15 were sentenced to an imprisonment), in 2009 – 11 persons (4 were sentenced to imprisonment), in 2010 – 7 persons (4 were sentenced to imprisonment).

As for the crime proceeds subject to confiscation, as it has been noted in the report of the first round of monitoring, it appears that the criminally received assets and proceeds, which have been mixed together, as well as the proceeds received from such assets, are still not included in the list of the criminally received proceeds which are subject to confiscation.

The draft Law “On Amending Certain Legal Acts of the Republic of Kazakhstan on Introduction of Criminal Liability of Legal Entities” provides for criminal liability of legal entities for committing certain economic and corruption crimes, including money laundering. In particular, committing a crime envisaged in Article 193 of the Criminal Code by a legal entity is sanctioned with a fine or deprivation of right to be engaged in certain activities or liquidation with confiscation of all assets of the legal entity remaining after completion of all necessary procedures in accordance with the legislation of the Republic of Kazakhstan.

Kazakhstan remains **partially** compliant with that recommendation.

Liability of legal entities

Previous Recommendation 15

Recognising that the responsibility of legal persons for corruption offences is an international standard included in all international legal instruments on corruption, Kazakhstan should, with the assistance of organisations that have experience in implementing the liability of legal persons (such as the OECD, the Council of Europe, and the United Nations), consider how to introduce into its legal system efficient and effective liability of legal persons for corruption.

In 2007 Kazakhstan was **partially** compliant with this recommendation.

Article 534 of the Code of Administrative Offences of the Republic of Kazakhstan stipulates liability of legal entities for provision of illegal material remuneration, gifts, benefits or services to persons authorized to perform state functions or persons equated to them, unless the committed act contains elements of a crime. The existing administrative liability is not efficient and effective liability of legal entities for corruption for various reasons, including the following: the liability is envisaged only for one offence; an entity is liable only if the offence was committed, approved, authorized by a the body / person performing management functions in the legal entity (Article 36 of the Code of Administrative Offences); the existing sanctions under Article 534 (fines from USD 100 to 5,000; in case of a repeat offence – prohibition of activities) are not dissuasive and proportionate.

Also Article 534 of the Code of Administrative Offences provides for administrative liability of a legal entity “if the committed act does not contain elements of a crime”. Since at the time of preparation of this report legislation of Kazakhstan did not envisage criminal liability of legal entities, such provision [of the Code of Administrative Offences] leads to exclusion of the legal entity from liability in case an individual commits a corruption crime. Obviously, this makes corporate liability ineffective and allows to hold legal entities liable only for minor administrative corruption offences.

In their written comments representatives of the Kazakh authorities also indicated that based on the court verdict holding liable a natural person a prosecutor has the right to apply to the court for liquidation of the legal entity in accordance with Article 49 of the Civil Code of Kazakhstan. However,

the said article provides for possibility of liquidation of a legal entity in case of “conducting activity with gross violation of legislation: systematic activity contrary to the legal person’s statutory goals; carrying out of activity without necessary permit (licence) or activity which is prohibited by law”. From this provision it does not stem that there is a possibility to liquidate a legal person for a one-time offence committed by its employee. But even if it were so, such liability could not be considered effective, in particular because it is linked to the liability of a natural person and due to the disproportionate sanction.

In May 2010 the Government of Kazakhstan submitted in the Parliament the draft Law “On Amending Certain Legal Acts of the Republic of Kazakhstan on Introduction of Criminal Liability of Legal Entities” which passed the first reading in December 2010.

According to that draft Law a legal entity is liable for crimes committed by an individual only in cases when a criminal act was committed in favour or in interests of the legal entity: 1) by an individual upon decision, approval or authorization of a body or a person performing management functions in that legal entity, *or* 2) by an individual having the right: a) to represent the legal entity; b) to take decisions on behalf of the legal entity; c) to control activities of the legal entity. Such standard of liability is too narrow and does not comply with international standards²⁰. It is necessary to envisage liability also in cases when a person mentioned in items “a”-“c)” above did not ensure proper control over the subordinate who committed a corruption crime.

The draft Law also specifies legal entities which are subject to criminal liability and this list correctly excludes only state institutions, while the state-owned commercial legal entities are on the list. The draft Law also lists types of crimes, the subjects of which are legal entities, and also specifies types of main and additional sanctions, which may be imposed on legal entities (fine, deprivation of the right to be engaged in certain activities and liquidation).

According to that draft Law “prosecution of a legal entity shall not release from criminal liability a guilty individual for committing that crime, who committed, organized, incited or facilitated committing of the criminal offence, likewise prosecution of an individual shall not release a legal entity from criminal liability for that crime”. Moreover, the draft law also allows to bring charges within the framework of one case, when “a legal entity and individual are accused, suspected in committing one and the same crime or different crimes committed within the framework of the same event”.

It appears that according to the draft Law a conviction of the natural person is an obligatory condition for conviction of the legal entity. This was confirmed by the drafters during the on-site visit. Such approach falls short of international standards, which require establishment of an effective liability of legal entities, thus making it necessary to have a corporate liability autonomous of the individual liability. Therefore, the draft Law should clearly allow criminal prosecution of a legal entity in case of discontinuance of proceedings against individual for various reasons. It is also recommended to identify the elements of guilt of a legal entity, which will be objective and thus will be different from the guilt of an individual. This will eliminate possible practical problems associated with prosecution of legal entity and will comply with the general principles of criminal liability, one of which is a guilt of the criminal subject in committing a crime. The fact that there is an objective imputation for legal entities should not be an obstacle, since it reflects the subjective nature of the legal entity and allows establishing an effective liability, which will not depend on the proof of the

²⁰ See Article 18 of the Council of Europe Criminal Law Convention on Corruption, as well as the OECD Council Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions of 26 November 2009 (Annex 1).

individual's guilt. This will also allow to spread the presumption of innocence guarantees specified in the Criminal Procedure Code to the legal entities.

It should be noted that the list of crimes envisaged by the draft Law for which legal entities are liable is substantially shorter than the list of crimes specified by the UNCAC. Moreover, only "Economic smuggling" (Article 209), "Giving a bribe" (Article 312) and "Legalization of criminally received monetary funds and other assets" (Article 193) out of the whole list of corruption crimes envisaged by the Criminal Code of the Republic of Kazakhstan (Note 5 to Article 307) are included in the list specified by the draft Law.

In general, the list and the level of the stipulated sanctions applicable to legal entities appear to be sufficient and dissuasive. One should also welcome the provisions on fairness of sanctions which should be necessary and sufficient to rectify social justice and prevent new crimes. A fine is imposed with due account for gravity of the committed crime and the amount of damages within the range from 5,000 to 500,000 monthly calculation rates (approximately USD 50,000 – 5,000,000). For entrepreneurs the amounts of fines are differentiated depending on the size of the legal entity – small, medium and major entrepreneurs as they are defined in the Law of the Republic of Kazakhstan "On Private Entrepreneurship". However, one should pay attention to the fact that the proposed maximum amount of fine may exceed the maximum the annual average value of assets for certain types of entrepreneurial subjects, which will result in imposition of excessive sanctions and de facto bankruptcy of enterprises (for example, the maximum size of assets of small businesses under the Law "On Private Entrepreneurship" is 60,000 monthly calculation rates, while the maximum amount of fine such companies under the draft Law is 100,000 monthly calculation rates). It is recommended either to decrease the maximum amount of fine or to set it as percentage ratio to the size of assets of the legal entity.

In general, the proposed amendment to the Public Procurement Law according to which a legal entity is prohibited to participate in public procurement within one year after imposition of any criminal sentence (regardless of whether the court applied such a sanction as restriction in engagement in certain activities), is considered positive and compliant with the best practices of other states. However, it appears that such restriction is reasonable only in case of prosecution for corruption crimes and maybe for some other crimes, but should not be applied automatically as a sanction for any crime of a legal entity. If it would be necessary to restrict participation of a legal entity in public procurement in case of committing other crimes, this can be done through imposition of a sanction in the form of restriction in engagement in certain activities.

Since the previous recommendation related to necessity of "considering" of introducing a liability of legal entities for corruption, and taking into account the preparation and even adoption in the first reading of the draft law on corporate liability, previous recommendation should be deemed as fully completed. However, certain provisions of the draft law have to be revised before its adoption.

The monitoring group also takes note of active objections of the Kazakh business community against the draft law on criminal liability of legal entities and calls on the Government and the Parliament to continue working on agreeing the positions, to conduct further discussions of the text at different levels, possibly with participation of international experts, before the draft law is finally adopted. It is also recommended to stipulate for deferred enactment of the law in order to allow legal entities to adjust themselves to these novelties, in particular, related to establishment of the proper internal control mechanisms.

Kazakhstan is fully **compliant** with this recommendation.

New Recommendation 2.1.-2.2.

- **To continue harmonisation of the legislation on corruption offences (Law on the Fight against Corruption, Criminal Code, Code of Administrative Offences).**
- **To bring provisions on criminal liability for corruption offences in compliance with international standards, namely:**
 - **to establish criminal liability for: promise/proposal of a bribe, acceptance of promise/proposal of a bribe, as well as for solicitation of a bribe as completed corruption crimes in the public and private sectors; giving a bribe and commercial bribery for the benefit of third parties; trading in influence;**
 - **to define the notion of ‘bribe’ in the Criminal Code and to envisage that the object of corruption crimes and administrative offences can be both material and any other (non-material) benefits;**
 - **to consider establishing criminal liability for illicit enrichment.**
- **To ensure that the offence of money laundering is criminalized in line with the international instruments and that definitions from the Criminal Code and the Law on Combating Money Laundering and Financing of Terrorism are consistent.**
- **To envisage an effective and dissuasive liability of legal entities for corruption crimes with proportionate sanctions, which should be commensurate with the committed crime. Both commission of a crime by certain officials and lack of proper control by the governing bodies / persons of such legal entity, which facilitated commission of the crime, shall trigger corporate liability. To conduct additional consultations with business representatives regarding criminal liability of legal entities and the respective draft law; to envisage deferred enactment of the law introducing criminal liability of legal entities.**
- **To analyse application of provisions on effective regret in administrative and criminal corruption offences and, if necessary, introduce changes which will exclude possibility of unjustified avoidance of liability.**

2.3. Definition of a public official

The subjects of corruption crimes are specified in the notes to Article 307 of the Criminal Code of the Republic of Kazakhstan. There are four categories of the subjects:

1) "persons authorized to perform state functions" – officials, deputies of the Parliament and maslikhats, judges and all civil servants in accordance with the legislation of the Republic of Kazakhstan on the civil service;

2) “persons equated to persons authorized to perform state functions” – persons elected to local self-government bodies; citizens duly registered as candidates for the President of Kazakhstan, deputies of the Parliament of Kazakhstan and maslikhats, as well as members of elected bodies of local self-government bodies; servants who temporarily or permanently work in local self-government bodies and whose salaries are paid from the state budget of Kazakhstan; persons performing managerial functions in the state organizations and entities where the state owns not less than 35% of the charter capital, as well as entities where the state-owned share (not less than 35%) in the charter capital is transferred to the national management holdings, national holdings, national development institutes, national companies, as well as their subsidiaries;

3) “officials” – persons who permanently, temporarily or by special authorization perform functions of the representative of power or perform organizational and regulatory or administrative and financial functions in the state authorities, local self-government bodies as well as in the Armed Forces of the Republic of Kazakhstan, other forces and military units of the Republic of Kazakhstan;

4) “persons holding a responsible public office” – persons holding offices specified in the Constitution of Kazakhstan, constitutional and other laws of Kazakhstan for performance of the state functions and powers of the state authorities, as well as persons holding political offices of the civil service according to the legislation of the Republic of Kazakhstan.

These definitions comply with those specified in the Law on the Fight against Corruption (Articles 2 and 3), except for the part of Article 307 of the Criminal Code, which classifies the political offices of the civil servants as “persons holding a responsible public office”.

Article 307 or other provisions of the Criminal Code do not define the terms “performance of functions of the representative of power”, “organizational and regulatory functions”, “administrative and financial functions”. Although such definitions are given in the Law on the Fight against Corruption, and in the Normative Resolution of the Supreme Court of Kazakhstan No. 18 of 13.12.2001 it is stated that one should refer to the Note to Article 3 of the Law on the Fight against Corruption when identifying whether a person has organizational and regulatory functions or administrative and financial functions. At the same time, since the Criminal Code contains autonomous definitions of certain terms and, for example, defines the terms “persons authorized to perform state functions”, “officials” and others (despite the fact that they are defined in the Law on the Fight against Corruption), the respective definitions should be added to the text of the Criminal Code.

Also neither Article 307 of the Criminal Code, nor the Law on the Fight against Corruption, nor the Normative Resolutions of the Supreme Court define the term “performance of functions of the representative of power”. Only the Note to Article 320 of the Criminal Code (“Insult of a representative of power”), which is placed in the different Chapter of the Criminal Code (“Crimes against the Order of Governance”), defines that in this Article and other Articles of the Code a representative of power shall mean “an official of the state power who is duly empowered in accordance with the statutory procedure with regulatory powers with respect to the persons who are not officially subordinated to such official”. This means that according to the definitions given in Articles 307 and 320 of the Criminal Code “an official” is “a person performing... functions of an official of the state authority who is empowered with...”. This further complicates classification and identification of the subjects of corruption crimes.

Also there is a question about the wording of the notes to Article 307 which explicitly do not refer to the which particular articles of the Code they apply (whereas many other notes in the Criminal Code, which contain clarifications / definitions, explicitly refer to the particular articles of the Code, to which they apply). An exception is Note 4 to Article 311 of the Criminal Code, which stipulates that in Articles 311-312 the term ‘officials’ means the officials mentioned in the Note to Article 307 of the Criminal Code. However, this specification relates only to two articles of the Criminal Code and only to a part of the subjects of the respective crimes.

Under Articles 228, 231 and 232 of the Criminal Code the subject of liability is “a person performing managerial functions in commercial *or other organization*”. According to the Note to Article 228, a person performing managerial functions in commercial or other organization mentioned in the Criminal Code shall mean a person who permanently, temporarily or by special authorization

performs organizational and regulatory or administrative and financial functions in the organization not being a state authority, local self-government body or organization, where the state-owned share is not less than 35 percent. Therefore, this definition includes state organizations (which include, inter alia, state establishments). However, “persons performing managerial functions in the state organizations” are also subject to liability under Articles 307, 308, 310, 311, 314, 315 of the Criminal Code. Accordingly, it is unclear under which article of the Criminal Code such persons can be held liable.

In general, such inconsistencies, gaps and complicated definitions (with cross-references, references to other articles and laws, etc.) contradict to the principles of legal certainty and predictability of legal norms, which is especially inadmissible for laws stipulating criminal liability. The very existence of such uncertainties in practice may itself facilitate commission of corruption crimes.

It is unclear from the presented materials whether members of the jury can be liable for corruption crimes, as the Law “On Members of the Jury” of 16.01.2006 No. 121-III does not clearly define their status. The same question arises with respect to the law enforcement officers as their status is governed by special regulations. It is necessary to introduce respective changes in legislation on liability for corruption offences and to ensure its application to all public officials and persons performing public functions.

One of the recommendations previously given to Kazakhstan was to introduce liability for active and passive bribery of **foreign public officials and officials of international organizations**. The Law of 21.07.2007 supplemented Article 311 of the Criminal Code of Kazakhstan (“Receiving a bribe”) with Note 4, which provides that the term ‘officials’ mentioned in that Article and Article 312 of the Criminal Code (“Giving a bribe”) also includes the officials of foreign states or international organizations. However, in these Articles the “officials” are subjects of only qualified offences (paragraph 2 of Article 311 and paragraph 2 of Article 312); other offences in these Articles refer to other subjects (“a person authorized to perform public functions or a person equated to them”, “a person holding a responsible public office” – for more details see above). Therefore, Articles 311-312 of the Criminal Code apply to officials of foreign states or international organizations only partly, which does not comply with the OECD recommendation.

It is also recommended to specify in detail the term “officials of foreign states or international organizations” in accordance with international standards (Article 2 of the United Nations Convention against Corruption; Articles 5, 6, 9-11 of the Council of Europe Criminal Law Convention on Corruption; Article 1 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions).

New Recommendation 2.3.

- **To harmonise provisions of the Criminal Code which determine the subjects of criminal liability for corruption crimes. To ensure application of the legislation on liability for corruption offences to all persons assigned with state powers.**
- **To envisage criminal liability of foreign public officials for all bribery offences and also to provide definition of such foreign public officials in accordance with international standards.**

2.4. Sanctions

The following sanctions can be imposed on persons found guilty of corruption crimes: a) fine; b) deprivation of the right to hold certain position or to engage in certain activities; c) public works; d) corrective works; e) restrictions on military service; f) restraint of liberty; g) arrest; h) deprivation of liberty. The list of sanctions which can be imposed for various crimes under the Criminal Code is provided below.

	Fine	Corrective works	Deprivation of right (main / additional sanction)	Confiscation	Restraint of liberty	Deprivation of liberty
Receiving a bribe (main offence)	Yes	No	Yes (add.)	Possible	Up to 5 years	Up to 5 years
Receiving a bribe (by an official; for illegal actions)	No	No	Yes (add.)	Obligatory	No	3-7 years
Receiving a bribe (responsible public office)	No	No	Yes (add.)	Obligatory	No	5-10 years
Receiving a bribe (extortion; by a group of person; large amount ²¹ ; repeatedly)	No	No	No	Obligatory	No	7-12 years
Receiving a bribe (especially large amount ²²)	No	No	No	Obligatory	No	10-15 years
Giving a bribe (main offence)	Yes	Up to 2 years	No	No	Up to 3 years	Up to 3 years
Giving a bribe (to an official; for illegal actions)	Yes	No	No	No	Up to 5 years	Up to 5 years
Giving a bribe (to a person holding a responsible public office)	No	No	Yes (add.)	Obligatory	No	5-10 years
Giving a bribe (by group of person; large amount; repeatedly)	No	No	No	Obligatory	No	7-12 years
Giving a bribe (especially large amount)	No	No	No	Obligatory	No	10-15 years
Abuse of official powers (para. 1, Article 307)	Yes	No	Yes (main)	No	Up to 2 years	Up to 2 years
Abuse of official powers (para. 4,	No	No	Yes (add.)	Obligatory	No	Up to 8 years

²¹ Over 500 monthly calculation rates (approx. USD 5,000).

²² Over 2,000 monthly calculation rates (approx. USD 20,500).

	Fine	Corrective works	Deprivation of right (main / additional sanction)	Confiscation	Restraint of liberty	Deprivation of liberty
Article 307)						
Exceeding of powers (para. 1, Article 308)	Yes	No	Yes (main)	No	Up to 3 years	Up to 3 years
Exceeding of powers (para. 4, Article 308)	No	No	Yes (add.)	Obligatory	No	Up to 10 years
Laundering of money (para. 1, Article 193)	Yes	No	No	No	Up to 3 years	Up to 3 years
Laundering of money (para. 3, Article 193)	No	No	Yes (add.)	Obligatory*	No	3-7 years
Commercial bribery (para. 1, Article 231 – active bribery)	Yes	No	No	No	Up to 2 years	Up to 3 years
Commercial bribery (para. 3, Article 231 – passive bribery)	Yes	No	Yes (main)	No	Up to 3 years	Up to 5 years
Misappropriation or embezzlement of the entrusted someone else's property (sub-para. 3."e", Article 176*)	No	No	Yes (main)	Obligatory	No	5-10 years
Fraud (sub-para. 3."e", Article 177*)	No	No	No	Obligatory	No	5-10 years

*For persons authorized to perform state functions and persons equated to them, if combined with the use of the official status.

The Criminal Code of the Republic of Kazakhstan envisages a broad range of possible sanctions for corruption crimes, which, in general, meet the requirements of effective, proportionate and dissuasive sanctions. It should be noted that the Law of 22.12.2009 increased sanctions for some corruption crimes and also provided for mandatory confiscation for several offences of receiving and giving a bribe. At the same time possibility of confiscation should be provided for all offences of giving a bribe.

2.5. Confiscation

Previous Recommendation 16

Review the provisions of the Criminal Procedure Code to ensure that the procedure to identify, trace, seize and confiscate proceeds and instrumentalities of corruption offences are efficient and operational. Subject to proper checks and balances and standard of fair trial consider introducing legislation which would require a convicted offender to prove the lawful origin of alleged proceeds of crime.

In 2007 Kazakhstan was **largely** compliant with this recommendation.

Confiscation, as a forced uncompensated seizure into the state property of all or part of the property owned by the convict, is stipulated by the Criminal Code as an additional (obligatory or optional) sanction. In 2007 Article 51 of the Criminal Code was supplemented with a provision according to which commission of corruption crimes is sanctioned with confiscation of not only the property of the convict in accordance with the statutory procedures but also the criminally received assets or property acquired at the expense of the criminally received funds and transferred by the convict into the third persons' ownership.

In addition the Criminal Procedural Code provides for the so called special (or procedural) confiscation, which applies irrespective of the confiscation as a criminal sanction and can be imposed for any type of crime. According to Article 121 of the Criminal Procedural Code when delivering a judgment or terminating a case the court should be decide an issue of material evidence. Material evidence may include items, if there are grounds to believe that they served as instruments of crime or kept the traces of crime thereon or were objects of criminal actions, as well as money and other valuables, items and documents, which may facilitate detection of the crime, determination of actual circumstances of the case, identification of guilty persons or refutation of the accusation or mitigation of liability. Instruments of crime shall be confiscated; criminally received money and other valuables shall be seized into the state property by a court decision.

However, the law does not provide for confiscation of criminally received proceeds which were transformed into other assets or were incorporated into legally received assets. Also the law does not allow confiscating money in the equivalent of the assets subject to confiscation, if confiscation of the assets themselves is impossible. It is also necessary to stipulate protection of interests of third parties – *bona fide* purchasers of assets subject to confiscation (a *bona fide* purchaser is the purchaser who did not know and should not know that the assets were received in a criminal way).

The shift of burden of proof with respect to the assets' origin is not envisaged and there is no information on whether such proposal, which was recommended to Kazakhstan, was considered.

The Criminal Procedural Code provides for sufficient mechanisms for identification and seizure of assets, which may be subject to confiscation. According to Article 64 of the Criminal Procedural Code for the purposes of execution of sentence as regards the civil claim, other property recovery or potential confiscation of assets the investigator is obliged to take measures for identification of the assets of the suspect, convict or persons who are subject to statutory material liability for their actions. In the course of pre-trial investigation in criminal cases of corruption crimes the investigator is also obliged to take measures for identification of the criminally received assets or property acquired at the expense of the criminally received funds and transferred by the convict into the third persons' ownership. The inquirer, investigator with authorization of the prosecutor or court have the right to arrest the property of the suspect, convict or persons who are subject to statutory material liability for their actions (Article 161 of the Criminal Procedural Code). In certain cases arrest of the property can be performed without the prosecutor's authorization but with his subsequent notification within 24 hours following the arrest of property.

Kazakhstan remains **largely** compliant with this recommendation.

2.6. Immunities and statute of limitations

Previous Recommendation 14

Adopt clear, simple and transparent rules for the lifting of immunity or reduce the scope of immunity to ensure that it is restricted in applications to acts committed in the performance of official duties.

In 2007 Kazakhstan was **largely** compliant with this recommendation.

The persons who have immunity from criminal prosecution are the following: the President of the Republic of Kazakhstan; deputies of the Parliament; Chairperson and members of the Constitutional Council; judges; General Prosecutor. Immunity does not apply in cases of apprehension at the scene of crime (*in flagrante delicto*) and for commission of grave or especially grave crimes. The previous recommendation of establishing a functional immunity was not fulfilled.

Special Chapter 53 of the Criminal Procedural Code specifies procedures for lifting immunity with respect to each separate subject having such immunity (Articles 496-504). The issues of giving consent to bringing a deputy of the Parliament to criminal liability, arrest or imposition of administrative sanctions imposed by court are also regulated by the Rules of Procedure of the Majilis (paragraphs 94-95) and Rules of Procedure of the Senate (paragraphs 86-89). Lifting of immunity of the General Prosecutor, Chairperson of the Supreme Court and judges of the Supreme Court are regulated by paragraphs 74-76 of the Senate's Rules of Procedure.

However, there are no legislative provisions which would regulate procedures for decision-making by the President based on the opinion of the Supreme Judicial Council on lifting immunity of judges (except for judges of the Supreme Court). It should also be noted that Rules of Procedure of both chambers of the Parliament stipulate that the decision on lifting immunity should be taken within 14 days following the receipt of the respective opinion of the Central Election Committee (CEC). At the same time there is no maximum term during which the CEC should present such opinion, which decreases the efficiency of the procedure for lifting immunity.

It is an important provision of the Instruction on Organization of Pre-trial Investigation in the Prosecutor's Offices²³ that it is not required to obtain an approval of the body authorized to lift immunity of the respective persons having such immunity in the following cases: a) concerning grave and especially grave crimes; b) in case of apprehension at the scene of a crime; c) concerning crimes of minor and medium gravity combined with grave and especially grave crimes; d) with respect to the person whose powers have been terminated by the time of initiation of the criminal case, even if the crime was committed during his tenure of office when such person benefited from immunity.

The statistics of bringing to criminal liability of persons with immunity are provided below in Section 2.9.

The established **statute of limitations** (see the table) for criminal prosecution (Article 69 of the Criminal Code) provide sufficient time for investigation and prosecution of corruption crimes. Even though the Criminal Code does not envisage a possibility of interrupting the statute of limitations period in case of failure to lift immunity from the person, this does not appear to be a problem since the agreement to lift immunity is not required for grave and especially grave crimes.

Crime	Category of crime	Statute of limitations
Receiving a bribe (main offence)	Medium gravity	5 years
Receiving a bribe (by an official; for illegal actions)	Grave	15 years
Receiving a bribe (a responsible public office)	Grave	15 years
Receiving a bribe (extortion; by a group of persons; large amount ²⁴ ; repeatedly)	Grave	15 years

²³ Approved by the General Prosecutor's order No. 48 of 28.08.2009.

²⁴ Over 500 monthly assessment indices (approx. USD 5,000).

Receiving a bribe (especially large amount ²⁵)	Especially grave	25 years
Giving a bribe (main offence)	Medium gravity	5 years
Giving a bribe (to an official; for illegal actions)	Medium gravity	5 years
Giving a bribe (to a person holding a responsible public office)	Medium gravity	5 years
Giving a bribe (by a group of persons; large amount; repeatedly)	Grave	15 years
Giving a bribe (especially large amount)	Especially grave	25 years
Abuse of official powers (para. 1, Article 307)	Minor gravity	2 years
Abuse of official powers (para. 4, Article 307)	Grave	15 years
Exceeding of power (para. 1, Article 308)	Medium gravity	5 years
Exceeding of power (para. 4, Article 308)	Grave	15 years
Laundering of money (para. 1, Article 193)	Medium gravity	5 years
Laundering of money (part 3 Article 193)	Grave	15 years
Commercial bribery (para. 1, Article 231 – active bribery)	Medium gravity	5 years
Commercial bribery (para. 3, Article 231 – passive bribery)	Medium gravity	5 years
Misappropriation or embezzlement of the entrusted someone else's property (sub-para. 3.“e”, Article 176*)	Grave	15 years
Fraud (sub-para. 3.“d”, Article 177*)	Grave	15 years

*For persons authorized to perform public functions and persons equated to them, if combined with the use of the official status.

Article 13-1 of the Law on the Fight against Corruption provides that a disciplinary sanction for an offences envisaged by that Law shall be imposed not later than within three months from the date of uncovering the offence and cannot be imposed later than one year from the date of commission of the offence. It is also provided that in case of refusal to initiate a criminal case or in case of termination of a criminal case, but if there are elements of an administrative offence or disciplinary offence a sanction can be imposed within the above-mentioned terms. Also according to paragraph 2 of Article 69 of the Code of Administrative Offences, an individual is subject to administrative liability for commission of an administrative corruption offence after expiration of one year from the date of its commission. Such provisions may result in situation when a person avoids liability for an offence envisaged by the Law on the Fight against Corruption, if the initiated criminal case was terminated after expiration of three months from the date of uncovering the offence. It is recommended to revise the said statute of limitations and to increase them, at least for administrative liability, and also to stipulate that initiation of a criminal case discontinues the three-month term.

Kazakhstan remains **largely** compliant with this recommendation.

New Recommendation 2.6

- **To improve procedures for lifting immunity from criminal prosecution, in particular, to specify in the legislation clear procedures for taking such decision by the President with the participation of the Supreme Judicial Council in established cases, to specify the terms for consideration of issues related to lifting of immunity by the relevant authorities. To limit immunities to acts committed in the course of execution of official duties.**
- **To consider increasing the statute of limitations for bringing to administrative liability for corruption offences. To ensure consistency among provisions of laws concerning suspension of terms for imposing disciplinary and administrative sanctions.**

²⁵ Over 500 monthly calculation rates (approx. USD 20,500).

2.7. International co-operation and mutual legal assistance

Previous Recommendation 17

Consider amending the Criminal Procedure Code to introduce a procedure of judicial appeal of a decision on extradition.

During the first round of monitoring in 2007 it was concluded that Kazakhstan was **fully** compliant with this recommendation. However, such conclusion should be qualified. In particular, the recommendation referred to the procedure for *judicial appeal of the decisions on extradition*, but the analytical part of the report to that recommendation referred to Article 16 of the Constitution of the Republic of Kazakhstan, which, *inter alia*, allows the arrested person to *appeal court's authorization to arrest and detention in custody*. This provision also granted the arrested person the right to *appeal a judge's resolution on extraditorial arrest* (later on that right was also stipulated in Article 534 of the Criminal Procedural Code).

As far as the procedure for court appeal of the decisions on extraditions is concerned, it should be noted that the Criminal Procedural Code was supplemented with Article 533-1 in accordance with the Law "On Changes and Amendments to Certain Legal Acts of the Republic of Kazakhstan on Issues of Further Humanization of Criminal Laws and Strengthening Guarantees of Legality in the Criminal Proceedings" of 18.01.11 No. 393-IV. Article 533-1 of the Criminal Procedural Code provides that "a resolution of the General Prosecutor of the Republic of Kazakhstan or authorized prosecutor on extradition can be appealed by the person, with respect to whom such resolution has been adopted, or by his defence attorney in a district or similar court at the person's location within ten days from the moment of receipt of the notification".

Kazakhstan is **fully** compliant with this recommendation.

Measures for asset recovery envisaged by Chapter V of the UN Convention against Corruption set the fundamental principle of that Convention. Kazakh legislation contains no provisions which would regulate return of the confiscated assets to the foreign state, or specifies the measures for direct return of the assets as prescribed in Articles 57 and 53 of the UN Convention against Corruption.

New Recommendation 2.7.

To provide in the legislation measures for direct asset recovery as envisaged by Article 53 of the UN Convention against Corruption, as well as procedure for and conditions of recovery and disposal of assets in accordance with Article 57 of that Convention.

2.8.-2.9. Application, interpretation and procedure, specialized law enforcement bodies

Special training for law enforcement bodies; anti-corruption specialization of prosecutors

Previous Recommendation 5

Ensure that prosecutors dealing with corruption cases have adequate specialized knowledge in anti-corruption prosecution. Consider introducing a specialization of prosecutors bringing corruption cases in courts.

In 2007 Kazakhstan was **largely** compliant with this recommendation.

According to Kazakh side, there were no special training seminars on the fight against corruption and ethics of servants in 2009 and 2010 organized by the Research Institute of Issues of Legality, Law and Order and Continuous Training of Personnel of the Prosecutor's Office under the General Prosecutor's Office. However, according to the provided information, there were two anti-corruption seminars organised by the structural units of the General Prosecutor's Office with participation of the personnel of the regional and similar prosecutor's offices (one seminar with participation of 49 employees in 2009, one seminar with participation of 61 employees in 2010). Also in 2010 professors, teachers, trainees, PhD students and candidates for a master's degree of the Financial Police Academy participated, in particular, in the seminar "Specifics of investigation of corruption crimes" for special prosecutors investigating criminal cases.

No special bodies (departments) dealing with detection, investigation and prosecution of corruption crimes were established in the Kazakh prosecutor's offices. At the same time there are **special prosecutors** investigating criminal cases. The Law of 17.07.09 No. 187-IV introduced changes in the Criminal Procedural Code, according to which prosecutors were authorised to remove cases from pre-trial investigation bodies and take them into own proceedings (before that they were only authorised to transfer a case from one pre-trial investigation body to any other body regardless of the investigative jurisdiction). The Criminal Procedural Code does not specify criteria of and grounds for such "removal" of cases, but mentions that such measure is exceptional. These issues are regulated in detail in the Instruction on Organizing Pre-trial Investigation in the Prosecutor's Offices (No. 48 of 28.08.2009), which stipulates that the Department of Special Prosecutors of the General Prosecutor's Office (hereinafter - the "Department") and senior assistants (assistants) to the regional and equated to them prosecutors for investigation and management of investigatory groups perform functions of criminal prosecution within their competences. A special prosecutor shall mean an official who is authorized within its competence to perform investigation of a criminal case either directly or through management of the investigatory group as the Head of the Department, Deputy Head of the Department, Head of the Department's division, senior assistant and assistant of the General Prosecutor for investigation and management of the investigatory groups, assistant of the General Prosecutor - criminal law expert, senior assistants (assistants) to the regional and equated to them prosecutors for investigation and management of investigatory groups.

The Instruction specifies the grounds for removal of a case from a pre-trial investigation body. It is stipulated that in exceptional cases for the purposes of completeness and objectiveness of investigation upon written application of the pre-trial investigation body or at its own initiative the General Prosecutor, his deputy in charge of activities of the special prosecutors, Head of the Department, regional prosecutor as approved by the Department may transfer a criminal case from the pre-trial investigation body to the special prosecutor regardless of the jurisdiction specified in the Criminal Procedural Code. A special prosecutor can investigate a criminal case when there were established facts of incomplete or delayed investigation, violation of constitutional rights of the procedure participants, receipt of complaints on actions of the investigation body, which were confirmed, failure to execute orders of the prosecutor, as well as making illegal procedural decisions by the investigation body.

There are no objections to the above. However, special prosecutors can investigate cases not only after their removal from other bodies but also having initiated a criminal case independently and taking it into their own proceedings. Instruction No. 48 provides that when taking a decision on initiating proceedings in the case and performing pre-trial investigation, including through management of an investigation group, the priority categories of criminal cases include cases connected with: serious violations of the constitutional rights of citizens, organized forms of criminality, *corruption and economic crimes* affecting the state interests; persons having privileges and immunities from criminal prosecution, employees of law enforcement and special bodies; high-profile crimes with proven facts of incompleteness, partiality or delays in the course of investigation.

A prosecutor therefore has a broad discretion in selection of cases which he would like to retain. This may have negative effect on independence of the pre-trial investigation bodies, for example, financial police, since cases in their jurisdiction may be investigated by the prosecutor at the latter's decision. Moreover, such broad discretion in selection of cases for investigation and combination of functions of pre-trial investigation and supervision over investigation in one body (prosecutor's office) may facilitate various abuses.

As regards anti-corruption specialization of prosecutors, introduction of special prosecutors does not envisage such anti-corruption specialization. "Special" nature of the said prosecutors is in their powers to perform pre-trial investigation.

In their written comments the authorities of Kazakhstan state that there exists an anti-corruption specialization of prosecutors in Kazakhstan. To confirm this it is mentioned that supervision over implementation of the Law on the Fight against Corruption is identified as one of the "specialized thematic directions of the prosecutors' activities" and that the necessary specialization of prosecutors is determined in organizing "supervision over the pre-trial investigation and inquiry bodies for investigation of corruption crimes on all stages of the criminal procedure, ensuring supervision over legality of proceedings in courts with respect to cases of corruption crimes, etc." More specific information was not provided, and it is therefore impossible to make a conclusion on the existence of such specialization and to assess its effectiveness. Besides, the question arises on the nature of "supervision of legality of review of criminal cases in the courts" – if this means supervision over decisions and/or activities of the courts, in such case it is a serious breach of principle of independence of the judiciary and separation of branches of power.

Kazakhstan remains **largely** compliant with this recommendation.

Previous Recommendation 7

Consider devising and implementing corruption-specific joint trainings for law enforcement (Agency), prosecutors, judges and other relevant officials.

In September 2007 Kazakhstan **was not compliant** with this recommendation.

In their written comments the authorities of Kazakhstan indicate that State Management Academy under the President, in addition to conducting regular continuous training courses for civil servants, from 28 January till 1 February 2008 held a specialized seminar on the fight against corruption for law enforcement bodies, prosecutors, judges and other respective officials with participation of directors of departments, their deputies, heads of directorates, units of the General Prosecutor's Office, the National Security Committee, the Ministry of Internal Affairs, the Ministry of Justice, the Agency for Regulation of and Supervision over the Financial Market and Financial Organizations and other agencies covering in total 65 persons. The regional centres for re-training and continuous training of civil servants also held special seminars with participation of employees of prosecutor's offices, courts, the National Security Committee, the Financial Police Department, penitentiary system bodies, customs bodies.

Conducting of such activities is commendable. However, previous recommendation concerned development and implementation of specialized joint trainings for law enforcement bodies ([Financial Police] Agency), prosecutors, judges and other relevant officials, that is a regular training course, not a single seminar (conference). For this it is necessary to develop on the basis of one or several training institutions special courses with a practical focus and targeting improvement of skills and supporting effective co-operation of various bodies in their fight against corruption.

Accordingly, Kazakhstan **is partially** compliant with this recommendation.

Previous Recommendation 6

Increase analytical capacities of the relevant law enforcement agencies and ensure more efficient statistical monitoring of corruption and corruption-related offences in all spheres of the Civil Service, the Police, the Public Prosecutor's Offices, and the Courts on the basis of a harmonized methodology, which would enable comparisons among institutions. Review and revise the cooperation procedures among various institutions involved in preventing and fighting corruption with a view to increase the efficiency of their activity, subject to proper checks and balances and due regards to human rights standards.

In 2007 Kazakhstan was **partially** compliant with this recommendation.

According to the provided information, for the purpose of increasing efficiency of the law enforcement bodies in fighting crime, joining efforts, co-ordination and interaction of the law enforcement bodies engaged in criminal investigation and inquiry, ensuring legality and law and order in the Republic of Kazakhstan, fight against organized crime, corruption and other socially dangerous acts the Coordination Council of Law Enforcement Bodies, chaired by the General Prosecutor, was established.

Besides, in 2010 a joint order of the General Prosecutor, the Minister of Justice, the Minister of Internal Affairs, Chairperson of the National Security Committee and the Chairperson of the Agency for Combating Economic and Corruption Crimes (Financial Police) "On Interaction Between the Law Enforcement Bodies and the Civil Society Organisations During Verification of Complaints regarding Torture and Other Illegal Methods of Inquiry and Investigation, and also Criminal Prosecution of these Facts" was adopted. Also there is a joint order of the Chairperson of the Tax Committee of the Ministry of Finance and the First Deputy Chairperson of the Agency of the Republic of Kazakhstan for Combating Economic and Corruption Crimes adopted in 2005 "On Approval of the Procedure for Interaction between Tax Bodies and Financial Police of the Republic of Kazakhstan on Detection, Prevention and Suppression of Offences and Crimes in the Field of Economic Activities".

In the meantime, there is no harmonized methodology which would allow performing a comparative analysis and ensure more efficient statistical monitoring of corruption and corruption crimes in all spheres of the civil service. There was no analysis made and no revision of the interaction procedures between various institutions engaged in preventing and combating corruption conducted to increase efficiency of their activities with due observance of the respective system of control and balances and with due compliance with the standards in the field of human rights.

However, as it is indicated in written comments by the authorities of Kazakhstan, with a view to improve analytical capacity of law enforcement bodies to carry out an effective statistical monitoring of corruption the Orders of the General Prosecutor of the Republic of Kazakhstan of 4 February and 4 September 2008 broadened the list of data on the number of the civil servants who were convicted of corruption crimes, subjected to administrative and disciplinary liability for corruption offences. It is stated that the changes introduced by these Orders allow identifying the level of corruption in each state body as well as effectiveness of measures for combating corruption. The Committee for Legal Statistics and Special Registrations of the Prosecutor General's Office regularly prepares analyses of statistical data, information of which is taken from automatic information systems of the Committee. In particular, the following types of analysis are compiled: analysis of statistical data on the status of legality and law and order in the country; analysis of statistical data on the measures taken by the law enforcement bodies to implement the Law of the Republic of Kazakhstan "On the Fight against Corruption". The above analyses are sent to all law enforcement bodies for use in their work on corruption prevention. Also together with the Civil Service Agency of the Republic of Kazakhstan the Committee compiles a quarterly rating of corruption level in the state authorities. This rating allows

to show the corruption level in each state body. The monitoring team did not have an opportunity to assess these developments.

Besides, in accordance with the order of the Head of the Presidential Administration the General Prosecutor's Office was instructed to co-ordinate integration of information systems of law enforcement bodies and interested state authorities. To implement this instruction the General Prosecutor's Office established a permanent interdepartmental working group on ensuring integration of information systems; this group consists of the first deputy heads of the state authorities. Work is carried out to set up a system of information exchange.

Kazakhstan is, therefore, **largely** compliant with that recommendation.

Specialized anti-corruption law enforcement agency

According to the Law of the Republic of Kazakhstan of 04.07.2002 "On the Financial Police Bodies of the Republic of Kazakhstan" the financial police bodies of the Republic of Kazakhstan are the specialised state bodies carrying out law enforcement activity aimed at prevention, detection, suppression, discovery and investigation of criminal and other illegal infringements of human and civil rights, interests of the society and state in the field of economic and financial activities, fight against corruption through operational and search activities, pre-trial investigation and inquiry, administrative proceedings within their competence established by law. The central authorized financial police body is the Agency of the Republic of Kazakhstan for Combating Economic and Corruption Crimes (Financial Police).

In accordance with the President's Decree of 21 April 2005 No. 1557 "On Issues of the Agency of the Republic of Kazakhstan for Combating Economic and Corruption Crimes (Financial Police)" the Agency is the state body which is subordinated and accountable to the President. The structure and total staff number of the financial police are approved by the President of the Republic of Kazakhstan upon proposal by the Agency's Chairperson. The Agency's Head and his deputies are appointed and dismissed in accordance with the President's Decree of 29 March 2002 No. 828 "On Certain Issues of Personnel Policy in the System of the State Power Bodies", i.e. by the President of the Republic of Kazakhstan as advised by the Head of the Presidential Administration. Heads of departments of the central office, departments for combating economic and corruption crimes (financial police) in the regions, cities of Astana and Almaty, Financial Police Academy are appointed by the Agency's Chairperson upon agreement of the Head of the Presidential Administration. Also the Agency's Chairperson and his deputies are political civil servants.

In general, the procedure for appointment of the Agency's leadership, their status, regulation of these issues in a lower level legal act and not the law, etc., give rise to questions regarding compliance with international standards (Articles 6 and 36 of the UN Convention against Corruption) regulating independence of the specialized anti-corruption agencies. See Section 1.6. of this report, where the respective recommendation is given.

It is mentioned that the procedures for selection, appointment and dismissal of the Agency's employees is regulated by the Law "On the Law Enforcement Service" which was adopted in January 2011. However, provisions on recruitment and service in the financial police can also be found in the Law "On the Financial Police Bodies", which does not require competitive selection. There are also concerns related to restrictions in competitive selection, which are envisaged by the Law "On the Law Enforcement Service", namely that the right to be recruited to the law enforcement service out of competition is given to persons who passed training in educational establishments of the law enforcement bodies, persons who in the past were military servicemen, deputies of the Parliament,

political civil servants, judges who have retired and meet the respective qualification criteria. For more details see also Section 3.2. of the report.

According to Article 192 of the Criminal Procedural Code the financial police bodies have an exclusive competence on pre-trial investigation in criminal cases related to the majority of crimes and certain economic and financial crimes. Within the financial police bodies there is a specialized unit on discovery and prevention of corruption cases, which is empowered to prevent, detect, suppress, uncover and investigate corruption crimes. Investigation of criminal cases of that category is performed by the investigation units of the financial police bodies. The financial police bodies have sufficient operational and search as well as investigation powers for effective detection and investigation of corruption crimes.

2.10. Statistics of prosecution for corruption crimes

Statistics of registered corruption crimes:

	2006	2007	2008	2009	2010
Misappropriation or embezzlement of the entrusted someone else's property committed by a person authorized to perform state functions or by a person equated to him, if combined with the use of their official status (sub-paragraph "d", paragraph 3, Article 176)	207	249	373	393	437
Fraud committed by a person authorized to perform state functions or by person equated to him, if combined with he use of their official status (sub-paragraph "d", paragraph 3, Article 177)	n/a	n/a	n/a	n/a	140
False entrepreneurship committed by a person authorized to perform state functions or by a person equated to him, if combined with the use of their official status (sub-paragraph "c", paragraph 2, Article 192)	n/a	n/a	n/a	1	1
Legalization of money committed by a person authorized to perform state functions or by a person equated to him, if combined with the use of their official status (sub-paragraph "a", paragraph 3, Article 193)	2	2	0	5	2
Abuse of official powers (Article 307)	517	398	354	337	381
Exceeding of power or official powers committed for the purpose of obtaining benefits and advantages for oneself or other persons or organizations or for the purpose of infliction of harm to other persons or organizations (sub-paragraph "c", paragraph 4, Article 308)	71	62	75	60	43
Illegal participation in entrepreneurial activities (Article 310)	4	3	8	7	5
Receiving a bribe (Article 311)*	321	256	290	341	341
Giving a bribe (Article 312)*	201	333	237	303	223
Inaction at service (Article 315)	48	17	13	8	8
Commercial bribery (Article 231)	5	4	7	9	1

* Separate statistics for qualified offences of crimes provided in Articles 311 and 312 of the Criminal Code is not compiled.

The statistics of imposition of administrative sanctions under articles of Chapter 30 of the Code of Administrative Offences ("Administrative Corruption Offences") and disciplinary sanctions according to the Law on the Fight against Corruption:

	2006	2007	2008	2009	2010
Article 532 "Violation of the financial control measures"	n/a	n/a	149	928	155

	2006	2007	2008	2009	2010
			4		1
Article 533 "Provision of illegal material remuneration to individuals authorized to perform state functions or to individuals equated to them"	n/a	n/a	2	4	1
Article 535 "Carrying out of illegal entrepreneurial activities and receipt of illegal proceeds by the state authorities and local self-government bodies"	n/a	n/a	2	0	0
Article 537 "Failure to take anti-corruption measures by the heads of the state authorities"	n/a	n/a	1	3	13
<i>Total (Articles 532-537 of the Code of Administrative Offences)</i>	714	571	1499	935	1565
Disciplinary liability under the Law on the Fight against Corruption	3560	3580	4276	4583	4454

Below is statistics on criminal prosecution of judges, prosecutors, members of the Parliament and political officials, including ministers. In general, it should be noted that the number of the above-mentioned prosecuted person is quite insignificant. There were no registered cases of criminal prosecution of members of the Parliament for corruption crimes.

	Political officials			Members of the Parliament			Prosecutors			Judges		
	2008	2009	2010	2008	2009	2010	2008	2009	2010	2008	2009	2010
Committed corruption crimes	1	13	10	0	0	0	5	6	1	22	6	4
Number of persons brought before a court	1	7	4	0	0	0	2	4	2	11	6	2
Number of convictions	0	2	7	0	0	0	3	2	4	3	7	2
<i>including those sentenced to imprisonment</i>	0	1	5	0	0	0	2	2	4	2	5	2
Brought to disciplinary liability in accordance with the Law on the Fight against Corruption	0	0	0	0	0	0	4	9	2	0	1	0
Brought to administrative liability (Articles 532-537 of the Code of Administrative Offences)	0	0	0	0	0	0	1	1	0	0	0	0

3. Prevention of corruption

3.1. Corruption prevention institutions

Since there is no separate corruption prevention institution in Kazakhstan, this topic is covered in Section 1.6. “Specialized anti-corruption policy and co-ordination institutions”.

3.2. Integrity of public service

3.2.1. Legal framework

The Law on the Civil Service contains a definition of the civil service and sets an obligation of civil servant to perform official duties for the purpose of “implementation of tasks and functions of the State”. The Law differentiates political and administrative civil servants and provides that appointment or election of a political civil servant has a “politically determinant nature” and such is responsible for implementation of political goals and tasks; whereas an administrative civil servant performs “official powers on a permanent professional basis”. It is commendable that the Law provides for such differentiation. Moreover, another positive provision of the Law (Article 27) provides that change of political civil servants can be a basis for termination of the administrative servants at the occupied position at the initiative of the newly appointed political civil servants.

However, it is necessary to specify these definitions, describe in more detail the meaning of “professional basis” and determine possible conflicts between “political tasks” and “tasks of the State”. For example, the term “professional basis” can be defined as performance of functions of protection of the State interests in general on the basis of legality and without undue influence from political servants, whose interests and duties are connected with protection of interests of the political group represented by them.

The Presidential Decree No. 357 of 10.03.2000 on the civil service further regulates issues of service of political and administrative servants. This Decree, however, does not clarify the difference between these two categories of servants and does not envisage tools of resolution of possible conflicts between the political and state tasks as well as the procedure for protection of professionalism of administrative servants.

A serious disadvantage is an extremely broad list of political positions of civil servants and assigning of a political servant status to positions, which should not be engaged in political activities and should not be governed by political goals and tasks. Such approach negates the positive effect of differentiation between political and administrative servants, results in politicization of the civil service, predominance of political liability, absence of the proper guarantees of professionalism in civil service and protection of professional servants.

The Register of the Positions of Political Civil Servants, approved by the Presidential Decree No. 317 of 22 December 1999, contains the following positions, which, among others, raise concern in this regard:

- head, first deputy and deputy heads of the Prime Minister's Office of the Republic of

Kazakhstan (according to the Regulations on the Prime Minister's Office of the Republic of Kazakhstan, it is in fact a Secretariat of the Government rather than a private cabinet of the Prime Minister);

- responsible secretaries of the ministries and agencies which are not members of the Government (who exercise, *inter alia*, powers of appointment and dismissal of ministry's employees, decide on disciplinary liability issues, i.e. have powers which are directly related to professional activity of civil servants and therefore should not be within the sphere of political control);
- chairperson and members of the Constitutional Council of the Republic of Kazakhstan (Constitutional Council performs functions of the constitutional jurisdiction body, in particular, examines legal acts with respect to their compliance with the Constitution of the Republic of Kazakhstan, and in no case should be guided by political considerations);
- human rights commissioner (this position, like position of a judge, requires impartiality and complete apolitical nature);
- chairperson of the Supreme Judicial Council (this body executes important powers in the sphere of formation of judicial corps, bringing judges to disciplinary liability, etc., and therefore should not have any political elements);
- chairperson and members of the Accounting Committee (attribution of these positions to the category of political ones does not comply with international principles of independence of the supreme audit institution);
- chairpersons of disciplinary councils of the Civil Service Agency (see the above clarification regarding responsible secretaries);
- heads of secretariats of the Supreme Court, Constitutional Court, Accounting Committee, Senate and Majilis, various officials in the Presidential Administration (these officials are authorised to support activities of the respective bodies and by nature of these activities they do not perform political functions).

According to information on personnel employed in the civil public service of the Republic of Kazakhstan presented after the on-site visit, overall there are 3,116 political servants and 84,273 administrative servants in Kazakhstan.

In general, when determining the range of political officials, one should proceed first of all from the nature of functions assigned to the official as well as from the method of their execution. For example, political positions may include the President, the Prime-Minister, members of the Government and their political deputies, members of the Parliament, who directly through elections or indirectly through appointment by a representative body get their mandate to implement certain political programme, shape the state policy, have powers (individually or collectively) to approve obligatory normative rules. Persons occupying such positions are subject to political liability and should not be subject to disciplinary sanctions. Administrative servants should be politically neutral.

For complete differentiation of political positions it is necessary to consider a possibility of their separation from the civil service in its narrow meaning (civil service as a part of the public service alongside with the service in local self-government bodies, service of judges, law enforcement service, military service, etc.) and regulation of the issues related to their status and powers in the special legal acts (laws on the government, on the parliament and status of its deputies, etc.). This would correspond to the rightly declared goal of professionalization of the civil service as stated in the Strategic Development Plan of the Republic of Kazakhstan until 2020²⁶, as well as the Concept of

²⁶ The Republic of Kazakhstan President's Decree No. 922 of 01.02.2010.

Legal Policy of the Republic of Kazakhstan for the period from 2010 till 2020²⁷, which mentions a “more clear differentiation between political and administrative civil service”.

The problem of extremely broad list of political positions is exacerbated by the existing procedure for approval of appointment to such positions.²⁸ Even political officials, who are appointed by the Government or ministers (heads of other bodies), must be approved by the Head of the Presidential Administration. This requirement applies to deputy ministers, chairpersons of the ministry's committees, heads of territorial bodies of the Civil Service Agency, management of the secretariat of the Supreme Court, etc. Moreover, the same procedure applies to the management of the law enforcement bodies: chiefs of departments of the central office of the General Prosecutor's Office, regional prosecutors and prosecutors with similar status, chiefs of departments of the central office of the Agency for Combating Economic and Corruption Crimes (Financial Police) and its territorial bodies, chiefs of regional customs control departments and justice bodies, and others. This results in excessive politicisation of the civil and law enforcement services and undermines their independence.

The Labour Code contains a section on the specific regulation of labour of civil servants. It uses a different terminology (state service – civil service – state servant; there is also a category of “employees of state enterprises”) and it is unclear how these provisions correspond with the Law on the Civil Service and which provisions apply in the area of integrity. Chapter 28 of the Labour Code provides that it regulates employment issues related to members of the Parliament and maslikhats with peculiarities specified in other legal acts of the Republic of Kazakhstan, which does not seem to be appropriate. It is unclear what normative provisions regulate integrity of Parliament's deputies and other elected persons.

The draft Concept of the new model of civil service sets out directions of further civil service reform. The draft Concept contains various useful directions which comply with many world-wide trends of the public service development, for example, a mixed career and position system, principle of meritocracy, the idea of establishment a senior public service, special attention to professional education and others. The draft puts special emphasis on the necessity of ensuring efficiency but does not pay enough attention to one of the principles of the rule of law – legality, i.e. execution of powers by civil servants strictly within the limits and in compliance with the law, regardless of political considerations, as well as by taking predictable and justified decisions, legal certainty, professionalism, i.e. capability of public servants to take independent and justified decisions within their competence and independently from of interests and decisions of the political servants.

At the same time, it appears that the draft Concept mistakenly includes political positions into the career vertical of the civil service as well as the possibility of moving from higher administrative positions to political positions. Career orientation in political positions distorts their essence and sets a wrong motivation for administrative servants, who will view their appointment on a political position as a top level of their career. This may result in the fact that administrative servants will first of all follow the political goals of the management, rather than act professionally on the basis of law and independently from political interests. Since appointment / election to political positions is performed by political bodies / officials, such approach to career growth of administrative servants *a priori* undermines their political neutrality. Although appointment / election to political positions of persons, who previously held administrative posts, is quite allowed, it should not become a part of the career path of a civil servant at the level of normative acts. This once again points at the problem of the approach existing in Kazakhstan towards differentiation between professional and political service. It is recommended to revise these provisions in the draft Concept taking into account the

²⁷ The Republic of Kazakhstan President's Decree No. 858 of 24.08.2009.

²⁸ The Republic of Kazakhstan President's Decree No. 828 of 29.03.2002.

existing global experience.

3.2.2. Recruitment and promotion

Previous Recommendation 19

Improve the system of hiring and promotion of public officials by increasing the value of criteria for assessing personal merits, which can be objectively verified, and by limiting as much as possible possibilities of arbitrary decisions; ensure stricter criteria for hiring staff by public institutions and local authorities in order to minimize the risk of corruption.

In September 2007 Kazakhstan was **partially** compliant with this recommendation.

The Law on the Civil Service sets an equal right of all citizens to get access to the civil service, as well as the principle of **competitive selection** for the administrative civil service positions. At the same time the Law does not specify that such competitive selection should be made on the basis of personal qualities and merits (merit-based competition) and that the best candidates shall have the right to become civil servants. The issues of carrying out competitions are regulated by the Regulations approved by the order of the Chairperson of the Civil Service Agency of 24 November 1999.

There is a central body responsible for the civil service issues, including recruitment issues – the Civil Service Agency. This Agency approves standard qualification requirements for the categories of administrative civil service positions, specifies the procedure for holding competitions for occupying an administrative position, controls correct holding of competitions, approves appointment in administrative positions as regards the candidate’s compliance with the existing qualification requirements.

Recruitment is carried out by separate bodies on a decentralized basis. The recruitment procedure provides for publication of notices of vacancies, which should include information on the general requirements to the position. However, it seems that such information does not contain the selection criteria. As follows from the provided legal acts, there is no requirement for the recruitment body to develop clear selection criteria.

Article 14 of the Law provides that participants of the competition for an administrative civil service position, who received a positive opinion of the competition commission, should be recruited at that position. However, it is unclear how the decision is taken, if several candidates received positive opinion; also the Law does not provide that a positive opinion can be given only to one candidate, who meets the selection criteria to the highest extent.

It is unclear whether the competition commission is obliged to give a grounded decision in case of a negative evaluation. The appeal procedure includes the right to file a complaint with the recruitment body, the Civil Service Agency or a court. Information was provided that territorial units of the Civil Service Agency in 2009-2010 received 58 complaints. No information was provided on the number of appeals in courts or regarding the results of consideration of complaints. It is noted that in 2009-2010 no complaints on the decisions related to the civil service recruitment were submitted to the General Prosecutor’s Office.

No amendments were made in Article 12 of the Law, which stipulates a possibility to occupy an administrative civil service position without competition by the political civil servants, members of the Parliament and of maslikhats, judges who retired. This undermines the principle of competitive merit-based selection and creates conditions for appointment to administrative positions through

corrupt connections. Furthermore, deputies of the Parliament, political civil servants, former judges are allowed to be recruited without a competition even in the law enforcement service (Article 7 of the Law "On the Law Enforcement Service" of 6 January 2011). Information on the number of servants recruited to the administrative civil service without competition as well as on the number of political civil servants who transferred to administrative positions was not provided. However, during the on-site visit representatives of the Civil Service Agency mentioned a minor number of servants who were transferred from political positions to administrative.

The draft Concept of the new model of civil service contains an analysis of the current system and proposes new directions. It is noted in the draft that "according to the survey following the results of 2009 approximately 56% of respondents consider the existing testing and interviewing procedures in the course of the civil service recruitment as transparent and objective. At the same time 33% of respondents believe that these procedures are not transparent, subject to personal influence and corrupt. Therefore, it is necessary to improve the civil service recruitment procedures and to increase transparency of the competitive selection". Besides, the Concept of Legal Policy of the Republic of Kazakhstan for the period from 2010 till 2020²⁹ provides for "introduction of new methods of selection for the civil service on the basis of professional and personal characteristics". These are correct ideas which need to be implemented in practice.

As noted in the written comments provided by the Kazakh authorities, according to the Concept targeted efforts are being taken to ensure transparency in the course of competitive selection. To further improve the testing procedures the Agency's Chairperson Order of 28 July 2011 No. 02-01-02/146 "On Certain Issues of Organizing Testing Procedures in the Civil Service Agency and its Territorial Departments" was approved. According to the Order, the results of civil servants' testing carried out in the Agency and its Territorial Departments will be issued on the registered high-security forms signed by the testing administrators and heads of the Agency's territorial departments. Representatives of the mass media and non-governmental organizations will be invited as observers to meetings of the competition commissions.

The Law does not contain provisions on the **promotion**, including the issues of merit-based promotion. Article 11 provides that political civil servants are appointed or elected but does not specify the basis of such appointment; the rules on merit-based promotion do not apply to them. In the framework of the civil service reform it is foreseen that civil service promotions will be based on results of the performance assessment of civil servant and that the term "career planning" will be included in the normative provisions.

As it was noted by the representatives of the Civil Service Agency during the on-site visit, appointment to a higher position can be made also via transfer upon decision of the relevant state body subject to approval by the Civil Service Agency with regard to compliance with the formal requirements. Besides, upon the state body's decision it may hold an internal competition among the servants of that particular body. General ground for such transfer is specified in the Regulations on the Civil Service, however, the presented legal acts do not provide for criteria of transferring servants or holding internal competition. Therefore, these procedures may serve as another way of appointing to higher positions not based on a merit-based competition, but rather under corrupt influence.

Kazakhstan is **partially** compliant with the previous recommendation.

²⁹ Approved by the Republic of Kazakhstan President's Decree No. 858 of 24.08.2009.

Attestation

Previous Recommendation 18

Improve the mechanisms of attestation of public officials, ensure regular assessment of performance and professional skills of public officials in order to determine the needs for improving the qualification of the officials (training), the possibility of promotion or the need for rotation, as well as to verify that the official meets the requirements of the post occupied.

In September 2007 Kazakhstan was **partially** compliant with this recommendation.

Article 16 of the Law on the Civil Service regulates attestation of administrative civil servants and provides that attestation is performed in order to identify the level of their professional qualification, legal culture, abilities to work with people. Attestation issues are also regulated by the Attestation Rules approved by the Presidential Decree No. 327 of 21.01.2000. "Testing" shall not apply to officials with the record of service over 20 years. Attestation is connected with promotion (paragraph 25 of the Rules) and may be used as a ground for termination in case of negative result (Article 27 of the Law). However, there is no connection between the attestation results and training, re-training or rotation of officials.

More detailed information on the attestation rules is not available. In particular, it is unknown what criteria are used in attestation, whether each criterion is evaluated by the attestation commission, whether the substantive marks on various criteria are reflected in the report. There are no rules for evaluation of political servants. Statistics on the attestation practice and its results (for example, the number of persons who passed attestation in 2009-2010, attestation results, the number of dismissed persons as a result of attestation, etc.) were not provided.

The leading role of the responsible secretary of the body in attestation of the majority of that body's officials remains to be a problem in the context of differentiation between administrative and political servants. According to the Rules the responsible secretary "decides on attestation issues", forms the attestation commission, approves decisions of the attestation commission, decides on recommendations of the authorized body of the civil service concerning conducting a repeat attestation (in case an official appeals the order approving attestation results). The issues of attestation by heads of departments and directorates of the central body as well as by heads and deputy heads of territorial subdivisions of the body shall be approved by the head of the central executive body. Therefore, the attestation procedure is fully controlled by the political civil servants (whom the responsible secretary is). This is one more example of unacceptable interference of political persons in the issues of professional civil service and falseness of the existing excessively broad list of political servants.

The Rules for evaluation of quality of work of administrative servants approved by the Government in December 2007, but invalidated in May 2009, represented an interesting novelty and specified criteria for evaluation of work of officials occupying managerial and other positions. It should be noted that the real evaluation of the quality of work in the OECD countries is a very complicated and controversial issue. In practice it is often difficult to ensure that such evaluation is objective and thoughtful. The said evaluation of work in Kazakhstan was not connected with attestation, it had to be performed on a quarterly basis (which is too often for the efficient evaluation of quality) and was the ground for bonus payments. There is no information on whether those Rules were implemented in practice and how, and also why they were invalidated.

Upon completion of the first round of monitoring there no significant measures taken to improve the attestation system; there is no data on the practice of attestation, which does not fully allow to evaluate this system. The quality evaluation system, which was introduced in 2007 and was existing

for approximately one year and a half, was a new element but could not influence on the extent of compliance with the recommendation. Also there were no changes aimed at making it necessary to undergo training (re-training) of officials as a result of attestation / evaluation of their work. At the same time one should welcome the declared goal of introducing by 2012 the quality evaluation system of civil servants taking into account the volume and quality of the work, responsibility level, increase of professionalism, observance of the Code of Ethics of Civil Servants (the Strategic Development Plan of the Republic of Kazakhstan until 2020).

Kazakhstan remains **partially** compliant with the previous recommendation.

3.2.3. Remuneration system

The Law on the Civil Service provides that the remuneration system of political civil servants is determined by the President of Kazakhstan. Remuneration of administrative civil servants is defined based on the Uniform Remuneration System approved by the President of Kazakhstan. The Law (Article 23) also envisages a possibility of awarding civil servants, including in cash, for “model performance of official duties, impeccable civil service, performance of especially important and complicated tasks and for other achievements at work”. The Rules of bonus payments, provision of material aid and setting of salary increments of 2001 regulate the terms and conditions for approval of such payments. The decision on making such payments is taken by the heads of state authorities. According to the information obtained during the on-site visit, the Rules for evaluation of quality of work of 2007 served as a basis for taking decisions on bonus payments. However, as noted before, the Rules of 2007 became invalid.

Also it is not known, what is the share of the monetary award (cash bonus) in the overall amount of remuneration of civil servants. Therefore, one cannot exclude possible unjustified and single-handed assigning of material awards by the state authorities’ heads, which can undermine professionalism and independence of administrative servants. The amount and frequency of such bonus payments are approved by the head of the central state body and accordingly can be changed arbitrarily.

The Rules for allocation of land plots to civil servants for individual housing construction are specified in the Government Resolution of 1996. Once all numerous approvals have been obtained, the final decision on allocation of the land plot is taken by akim of the respective administrative and territorial unit, *i.e.* the head of the local executive power body. At the same time the Rules do not specify the possible grounds for rejection, however, envisage the possibility of rejection as such.

3.2.4. Legality and impartiality

The Law sets the following principles of the civil service: legality; Kazakh patriotism; unity of the civil service system; priority of rights, freedoms and lawful interests of citizens over state interests; general availability, *i.e.* equal right of citizens to access the civil service and to be promoted in services based on their capabilities and professional qualification; voluntary nature of employment in the civil service; professionalism and competence; equal remuneration for equal work; obligatory compliance with decisions taken by the higher state authorities and officials within their competence; control and accountability; consideration of public opinion and openness; legal and social protection of civil servants; award for good faith and proactive execution of official duties, performance of especially important and complicated tasks; personal liability; continuous training.

These are good principles; however, this list should probably be supplemented with the principle of impartiality and also the principle of legality be further developed. Besides, the Law as well as maybe other legal acts should specify in more detail the principle of professionalism. For example, there are no provisions which would protect an administrative civil servant from dismissal or demotion in case of conflict, for example, with a political official.

Incompatibilities and conflict of interests

Previous Recommendation 23

Improve legal regulation, which establish prohibitions and limitations, as well as responsibilities for preventing of conflict of interests for public officials, in order to prevent that the private or material interests of any state official, his/her relatives or business partners can affect his/her performance in the public interests; in order to promote transparency of public officials activities and their accountability to the society, and to promote the trust of the society to the activities of public officials.

In September 2007 Kazakhstan was **partially** compliant with this recommendation.

Since the time of the first round of monitoring there was a positive step forward in supplementing the Law on the Civil Service in December 2010 with provisions on conflict of interests. The latter is defined as “a situation when there is a contradiction between private interest of a civil servant and his due execution of official duties or lawful interests of individuals, legal entities, the State, which may result in infliction of harm to these lawful interests”. This definition can be improved by bringing it in compliance with the definition used by the OECD³⁰. The definition should not be limited to “infliction of harm to lawful interests”, as then it becomes too narrow and unclear (for example, what comprises “lawful interests of the State”?).

Article 18-2 of the Law provides that a civil servant is prohibited to execute official duties, if there is a conflict of interests. A civil servant shall take measures to prevent and resolve conflict of interests, in particular, he shall notify his direct superior or management of the state body. Superiors or management of the state body shall take timely measures to prevent and resolve conflict of interests, in particular: 1) to assign to another person execution of official duties of the civil servant on the issue, in connection with which the conflict of interest has arisen or may arise; 2) to change official duties of the civil servant; 3) to transfer the civil servant, subject to his consent, to another position in accordance with the procedure established by legislation of the Republic of Kazakhstan.

There are no more detailed rules on the procedure for prevention and resolution of conflict of interests. It seems that the Civil Service Agency does not play any role in these issues. Although during the on-site visit the Agency’s representatives indicated that it can provide clarifications on the implementation of the statutory provisions on the conflict of interests. They also mentioned that there were plans of developing state bodies specific procedures for prevention of conflict of interests.

The Law also regulates incompatibilities connected with the civil service. A civil servant may not be a deputy of representative bodies; engage in other paid activities (except for educational, scientific and other creative activities); engage in entrepreneurial activities, including participation in managing a commercial organization; represent third persons in the state body, in which he works or to which he is subordinated or which he controls; use for non-service purposes material and technical, financial and informational means supporting his service activities, other state property and service information; participate in strikes; use services of individuals and legal entities for his private purposes in connection with execution of official duties.

The Laws on the Fight against Corruption and on the Civil Service also envisage mechanisms of transfer of assets, including shares (stocks of shares) in charter capital of commercial organizations,

³⁰ See, for example, the OECD Guidelines for Managing Conflict of Interest in the Public Service, approved by the OECD Council in June 2003, www.oecd.org/dataoecd/13/26/2957345.pdf.

into trust for the time of service, if use of such assets results in gaining income. A trust management agreement should be notarized and its copy should be submitted to the HR department of the state body where the civil servant works. Compared with other persons authorized to perform state functions, deputies of the Parliament, members of the Government, chairperson and members of the Constitutional Court, judges are also additionally obliged to transfer into trust management even bonds and shares of investment funds. The procedures for transferring assets into trust management are regulated by the Government Resolution of 2000, as amended.

Failure to transfer assets into trust management as well as incompliance with other obligations and incompatibilities set by the law is a ground for termination of service of administrative civil servants. There is no similar rule applying to political civil servants.

Such restrictions are worth of praise and may serve as an example of proper regulation of such issues. Information on the assets transferred into trust management, including on ownership of shares in particular commercial organizations, is important for identification of actual or potential conflicts of interests of the civil servant. Therefore, it is recommended to introduce obligatory publication of such information, for example, with respect to political servants.

Kazakhstan is **largely** compliant with this recommendation.

Special verification (vetting)

One of the positive novelties is the introduction of a special anti-corruption vetting of state office candidates (paragraph 3, Article 8 of the Law on the Fight against Corruption, which was introduced to the Law according to the changes of 29.12.2010). Such verification “with respect to observance of anti-corruption legislation” is introduced for “positions associated with the high risk of commission of corruption offences”. However, at the time of preparation of this report the list of such positions and mechanism of vetting were not approved by the Government according to the Law³¹ and the monitoring group therefore could not evaluate usefulness and effectiveness of this instrument. Such vetting may become an additional tool for prevention of corruption and ensuring integrity at the civil service. At the same time it is necessary to clearly define the list of issues, which are subject to verification, and ensure that such verification is mandatory for all positions with high risk of corruption. The list of such positions should not be limited to managerial positions but should rather be based on functional duties and the level of corruption exposure risks.

Moreover, special vetting is envisaged during recruitment in the law enforcement bodies (Article 6 of the Law on the Law Enforcement Service). The Law does not specify the scope of vetting or the procedure for its conducting.

Internal control

Previous Recommendation 22

Improve internal control in state bodies and local authorities, in doing so pay special attention to the activities of those public officials, whose activities are particularly vulnerable to corruption, in order to prevent the conflict of interest of public officials.

In September 2007 Kazakhstan was **partially** compliant with this recommendation.

³¹ The Government was instructed to approve the list of positions associated with the high risk of commission of corruption offences, with specification of special, higher requirements for recruitment and service on these positions, already by the Republic of Kazakhstan President’s Decree No. 793 of 22.04.2009.

In this recommendation the internal control system means bodies of internal security or other similar units, which are responsible for prevention and detection of corruption and related violations within the respective bodies. The internal financial control system of Kazakhstan is analyzed in Section 3.4.

In the majority of the central executive bodies and law enforcement agencies of Kazakhstan there exist internal security services or their analogues. The monitoring group is not aware of legal acts, which would uniformly regulate establishment and activities of such units.

These units are quite active in uncovering corruption offences and other violations, in particular, those which are subject to disciplinary liability. For example, according to the statistics provided by Kazakhstan, internal security units of the Agency for Combating Economic and Corruption Crimes (Financial Police) in 2009 detected 71 officials who committed corruption offences and 61 such officials in 2010. In 2009 and 2010 the internal security units of the prosecutor's offices uncovered 4 and 3 corruption offences accordingly with 4 and 3 officials accordingly brought to disciplinary liability. In 2010 the internal security units of the Ministry of Internal Affairs detected 130 and in 2009 – 175 corruption offences, among which 35 were crimes (78 in 2009). The tax bodies uncovered 10 corruption offences in 2009 and 28 corruption offences in 2010, which were committed by tax officers. It is necessary to note a relatively low number of detected corruption offences and persons who were brought to disciplinary liability according to the Law on the Fight against Corruption in the public prosecution bodies.

According to the data of the Committee for Legal Statistics and Special Registrations of the General Prosecutor's Office of the Republic of Kazakhstan in 2009-2010 the following number of officials was brought to disciplinary liability in accordance with the Law on the Fight against Corruption:

	2009	2010		2009	2010
Ministry of Internal Affairs	301	469	Ministry of Education and Science	7	0
National Security Committee	6	6	Ministry of Transport and Communication	19	11
Prosecutor's Office	9	2	Ministry of Energy and Mineral Resources	2	4
Committee of Penitentiary of the Ministry of Justice	129	104	Ministry of Health Protection	127	171
Agency for Combating Economic and Corruption Crimes	64	62	Ministry of Industry and Trade	6	8
Tax Committee	23	40	Ministry of Environmental Protection	34	15
Customs Control Committee	175	77	Ministry of Economy and Budgetary Planning	4	0
Military servicemen of the Ministry of Defense	224	242	Ministry of Tourism and Sport	2	0
Interior troops of the Ministry of Internal Affairs	68	45	Ministry of Culture and Information	3	0
Border Guard Service of the National Security Committee	115	68	Ministry of Agriculture	235	270
Republican Guard	0	0	Ministry of Labour and Social Protection of the Population	29	0
Ministry of Emergencies	84	72	Statistics Agency	10	6
Judges	1	0	Agency for Land Resources Management	13	9
Akims	217	124	Agency for Regulation of Natural Monopolies	2	4
Deputies	4	0	Agency for Informatisation and Communications	1	3

Ministry of Justice	25	25	Agency for Supervision and Regulation of Financial Markets	0	0
Court Bailiffs	19	40	Officials of akimats and their structural units	2527	2524
Ministry of Foreign Affairs	0	0	Officials of other state bodies	82	35
Ministry of Finance	16	12			

It is obvious that not all officials mentioned above were brought to disciplinary liability by the internal security units.

Although the task of uncovering, suppressing and bringing to liability for corruption offences is a very important one, it is necessary to pay more attention to prevention of corruption and conflicts of interests by the internal control units. Such units should work on raising awareness among officials on the anti-corruption regulations, facilitate prevention and resolution of conflicts of interests, perform certain functions of control over filing of tax declarations, etc.

The positive trend is removing of the internal security units from subordination to the heads of local bodies and their direct subordination to the management of the central office of the institution. In the system of internal affairs bodies of Kazakhstan the head of the internal security unit is appointed by the minister; heads of territorial units are not subordinated to the heads of local departments; there were introduced positions of representatives of the internal security units in other divisions of the Ministry of Internal Affairs. There is an internal work plan of the internal security unit and every quarter in-service training is conducted. Direct vertical subordination of the internal security units to the agency's head also exists in the Agency for Combating Economic and Corruption Crimes (Chairperson of the Agency appoints the heads of both the central and territorial internal security units). The same procedure exists in the Customs Control Committee of the Ministry of Finance.

Taking into account similar functions of the internal control units in various agencies, it is necessary to consider an issue of co-ordination of their activities, methodological support, joint trainings, especially on corruption prevention issues, conflicts of interests, consultative support of employees on implementation of anti-corruption laws, etc.

Kazakhstan is **largely** compliant with this recommendation.

Asset declarations

Previous Recommendation 21

Improve the system of checking of declarations of assets and income by public officials, by adding to the declaration information necessary for controlling the conflict of interest.

In September 2007 Kazakhstan was **not compliant** with this recommendation.

In accordance with paragraph 2 of Article 9 of the Law on the Fight against Corruption, persons holding state offices annually during the period of execution of their powers in accordance with the procedure stipulated by the tax legislation submit to their relevant tax inspections a declaration of taxable income and assets located both on and outside of the territory of the Republic of Kazakhstan. Such declaration shall be submitted to the relevant tax inspection annually not later than by 31 March following the reporting period. Personal income tax declaration shall also be submitted by state office candidates or by candidates for offices connected with execution of state or equal functions as well as persons holding state offices or offices connected with execution of state or equal functions. Such persons shall also submit to their current or potential employer a confirmation acknowledging filing of the declaration with the tax body. Also persons who were dismissed from the

civil service on negative grounds³² shall continue submitting declarations during three years following their dismissal.

Non-submission or submission of incomplete, false declarations and information, if there are no elements of a crime in such act, is a ground for denying the person of assignment of the relevant powers or his dismissal. A similar intentional act triggers administrative liability (Article 532 of the Code of Administrative Offences) for the state office candidates, for persons occupying state offices as well as for their spouses. In December 2009 the Code of Administrative Offences was supplemented with Article 206-2, which provided for liability for similar offence committed by persons dismissed from the civil service for negative reasons as well as by their spouses.

According to the Tax Committee of the Ministry of Finance in 2009-2010 there were submitted accordingly 226,178 and 159,466 declarations (form No. 230.00). At the same time it is noted that administrative sanctions under Articles 532-537 of the Code of Administrative Offences (Chapter "Administrative Corruption Offences") were imposed on 935 and 1,565 persons. If the above numbers refer to the persons sanctioned under Article 532 of the Code of Administrative Offences ("Violation of the financial control measures"), then in general the noted growth is positive. However, from the provided information it is not clear, which particular offences were sanctioned and whether that was the result of strengthening measures for verification of declarations.

The main problem of the existing regime of asset declarations is its tight link to the tax legislation. Declaring is obligatory only for income and assets which are subject to taxation under the tax legislation. The latter provides for types of income and assets which are not subject to taxation. Therefore, declarations of civil servants and state office candidates do not fulfil their function of prevention of conflicts of interests and corruption offences, since they do not give a full picture of the property status and other interests of the person. Also there may be difficulties in using such declarations as evidence of unjustified income. In that respect no relevant measures were taken since the first round of monitoring. This problem is also mentioned in the recently approved Concept of Moving to the Universal Declaring of Income and Assets by Citizens of the Republic of Kazakhstan³³. The system of verification of the submitted declarations was not improved either.

According to paragraph 7 of Article 9 of the Law on the Fight against Corruption, "in accordance with the procedure set by the law there may be published information about the amounts and sources of income of officials occupying responsible state offices as well as information about income of candidates for elected state offices at the moment of their nomination". The term "responsible state offices" is clarified only in the Criminal Code (paragraph 3 of the Note to Article 307), while the procedures regulating publication of such information do not exist. Moreover, there is also a problem with the discretionary nature ("may") of publication of such information. It appears that no declarations were published at the time of monitoring. Therefore, it is necessary to envisage

³² Paragraph 1-1 of Article 27 of the Law on the Civil Service: provision by administrative civil servant of knowingly false information on his income and assets; failure to comply with obligations and incompatibilities set by this Law; failure to transfer assets into trust management; commission of a corruption offence; coming into legal force of a guilty verdict; employment of a person who committed a corruption crime or a person who has been previously dismissed for commission of a corruption offence; termination of the criminal case on non-rehabilitative grounds for commission of a corruption crime; submission of knowingly false documents or information during recruitment to the civil service, which could be the grounds for denying recruitment in the civil service.

³³ Approved by the Government's Resolution of 23 September 2010 No. 975 ("With respect to information indicated in the regular declaration it is necessary to move away from the current principle of reflection of only taxable income by providing declaration of all income received during the calendar year and to decide which information on the assets will be reflected in the regular declaration.")

obligatory publication of declarations submitted by senior officials (for example, political servants, heads and deputy heads of the central executive authorities, other higher state power bodies, including judicial bodies, prosecutor's offices) and free public access thereto. Also in order to raise trust to the authorities, civic control over the public administration, prevention and uncovering of corruption, it is necessary to prohibit classifying declarations of all civil servants as restricted information; such declarations should be disclosed upon request. Of course, certain personal data (like address of residence, bank details, tax identification number) can be redacted.

Therefore, Kazakhstan remains **non-compliant** with this recommendation.

Codes of ethics (conduct)

The Code of Ethics of Civil Servants (Rules of Service Ethics of Civil Servants) was put in a new wording by the Presidential Decree of 1 April 2011; previous wordings of the Code were approved in 2000 and 2005.

The first duty of civil servants is "to adhere to the policy of the President of the Republic of Kazakhstan and to consistently put it into practice". The same provision is duplicated in the ethics codes of separate state authorities, in particular for the internal affairs officers as well as employees of the prosecutor's offices. This does not correspond to the principles of a democratic state (Article 1 of the Constitution of the Republic of Kazakhstan), namely to the principle of the rule of law. In comparison with the previous wording of the Code, observance and protection of rights, freedoms and lawful interests of citizens were moved to the sixth place in the list of duties. A greater priority was given to the work for the benefit of the society and the State and also to opposing actions that cause damage to the State interests and prevent efficient functioning of the state authorities. This also does not comply with the democratic principles and provisions of the Constitution of the Republic of Kazakhstan (Articles 1 and 12).

The positive development is putting of anti-corruption issues into a separate section of the new wording of the Code of Ethics. The civil servants are obliged to counteract corruption, prevent corruption offences, suppress corruption offences committed by other servants, eliminate and stop such offences, including by informing authorized state bodies and management. The Code also contains provisions on protection of whistleblowers by the management of the state body, which has to take relevant measures for protection from "illegal persecution, which negatively influences further service activities of the civil servant, his rights and lawful interests". The Code also obliges civil servants not to allow conflicts of interests and to take measures for their prevention and resolution.

The new wording of the Code preserved the provision on obligation of the civil servant to take measures, within a month term, to refute (including through judicial proceedings) unjustified publicly made accusations in corruption, including accusation in engagement in entrepreneurial activities, lobbying someone's interests, illegal receipt of income and assets, which are not commensurate with his income. This is a controversial provision. On the one hand, this speaks for acknowledgement of the importance of combating corruption and preservation of pureness within the civil service ranks as well as necessity of reacting to public criticism originating from the society. On the other hand, imposing such a duty (moreover within a month and through judicial proceeding) on civil servants may be a disproportionate requirement. Public accusation may have different features, do not contain specific facts or suspicions and result from person dislike of a civil servant. It would be more important to stipulate an obligation of the law enforcement agencies and management of the respective state body to perform relevant examination (official investigation) and to take measures in response to specific accusations in commission of a corruption offence or publication of other suspicions in lack of integrity of the civil servant (for example, with respect to his excessive income

and assets). Even if such provisions remain in the Code, then maybe it would be proper to limit the duty to refute and apply to court only to cases of accusations in specific corruption offences with reference to factual circumstances.

The Code was supplemented with a provision stipulating that within a month after being recruited in the service a civil servant must be familiarized with the Code with written acknowledgment thereof. Although the new wording of the Code does not contain a clause on liability for violation of the Code, the Law on the Civil Service (Article 28) provides for imposing of disciplinary sanctions for non-compliance or improper compliance with duties of the civil servant; whereas according to Article 9 of the Law one of such duties is observance of the service ethics rules.

The state authorities of Kazakhstan also provided several codes of conduct existing in separate institutions, in particular, the Rules of Service Ethics of the Internal Affairs Officers (Order of 07.06.2005), the Rules of Service Ethics of the Employees of the Prosecutor's Offices and Institutions (Order of 13.10.2009), the Code of Professional Ethics of the Tax Authorities' Officials (Order of 30.09.2006), the Code of Ethics of the Customs Authorities' Officials (Order of 04.06.2003). The first two documents mainly repeat provisions of the Code of Ethics of Civil Servants (the Rules of the Service Ethics of Civil Servants). There is also the Code of Judicial Ethics approved by the Resolution of the Fifth Congress of Judges of the Republic of Kazakhstan of 18.11.2009.

No information on special training on issues of implementation of the codes of conduct of civil servants was provided. The orders on approval of institutional rules of the service ethics usually instruct the heads of the respective units to organize study of these rules (in the systems of internal affairs and prosecutor's offices – "with passing of tests"). According to the additional information presented after the on-site visit, every year the curricula of in-service training courses for judges and employees of the judicial system in the Institute of Justice of the State Management Academy under the President of Kazakhstan include topics of lectures and seminars on professional ethics. In accordance with the plan-schedule, 373 judges and 93 employees of secretariats of local courts underwent such in-service training in 2009-2010.

The draft Concept of the new model of civil service contains a chapter "Improvement of ethics rules", which confirms understanding of the importance of the problem. However, the approach proposed in the chapter seems to be too technocratic. It is based on the assumption that all ethical issues can be solved though building of a two-level system of legislation and regulation, introduction of various rules and regulations. This approach is typical for the post-Soviet countries, which does not include measures to promote values, training and upbringing as well as practical guidelines for civil servants. The draft includes an important proposal on introduction of responsibility of heads of state authorities for ensuring ethics in their organizations.

Practical guidelines and training

Previous Recommendation 20

Prepare and broadly disseminate comprehensive practical guidelines for public officials about corruption, conflict of interests, ethical norms, sanctions for non-reporting about corruption; consider introducing regular training at work place for public officials on the above issues.

In September 2007 Kazakhstan was **not compliant** with this recommendation.

The provided information gives an insight into how certain agencies organize anti-corruption trainings for their employees. For example, the Institute of Justice of the State Management Academy under the President of the Republic of Kazakhstan holds seminars on ethics and prevention of offences among judges. There are no regular trainings in the General Prosecutor's Office, there

were organized only two seminars in 2009. There are seminars on professional ethics of lawyers in the system of the Ministry of Internal Affairs. This trainings are not systematic, it is not connected with the provisions set by the codes of conduct or with the rules for prevention of conflicts of interests and is not practical. Moreover, there is no information about what training is organized for those agencies which are most exposed to corruption to the greatest extent (according to the statistics on the imposed administrative sanctions), such as the Customs Control Committee, akimats, the Ministry of Agriculture, the Ministry of Health Protection, etc.

The Agency for Combating Economic and Corruption Crimes (Financial Police) issued a leaflet on implementation of anti-corruption regulations, which was distributed among employees of the state authorities, national management holding companies and national companies. The leaflet contains a definition of the term 'corruption', describes types of corruption offences and applicable sanctions, information on anti-corruption bodies, means of notification about facts of corruption (including the toll-free phone number available throughout the whole territory of Kazakhstan, e-mail address of the Agency and blog of the Agency's Chairperson, telephone number for providing information on offences committed by the financial police officers), as well as on safety guarantees for persons facilitating fight against corruption.

As it was noted during the on-site visit, knowledge of anti-corruption laws is checked during competitions for occupying administrative civil service positions and during attestation of civil servants.

The plan-schedule of in-service training for civil servants in the State Management Academy under the President for the first six months of 2011, which was presented after the on-site visit, refers to one seminar on the topic "Current Issues in the Fight against Corruption" for 38 participants (heads, deputy heads and specialists of structural units of the central state authorities, heads and deputy heads of the local executive authorities). There are separate training courses for the newly recruited civil servants as well as for servants appointed on managerial positions with the following topics: "State Management and Civil Service" for the first group and "Modernization of State Management" for the second group. It is necessary to consider including anti-corruption courses in the curriculum of in-service training for these persons.

According to the provided information the Academy's Institute of Justice within the framework of training of candidates for a master's degree has a course of lectures on anti-corruption issues. In 2010/2011 academic year a course "Anti-corruption policy of the Republic of Kazakhstan" was introduced. In 2011 it is planned to introduce a 45-hour optional course on this topic also for candidates for a master's degree of the Institute of the State and Local Management and the Institute of Diplomacy. Within the framework of in-service trainings for judges and employees of the judicial system in the Institute of Justice the following number of persons took part in anti-corruption trainings: 450 persons in 2006/2007 academic year, 530 persons in 2007/2008 academic year, 527 persons in 2008/2009 academic year, 516 persons in 2009/2010 academic year, 175 persons during the first six months of 2010/2011 academic year.

Anti-corruption training is also provided for civil servants by the Institute of Retraining and Continuous Training of Civil Servants of the Academy. According to the curriculum for 2010/2011 academic year each group of trainees has seminars on this topic with the duration of not less than four hours. Besides, continuous training of civil servants is also performed in the format of separate specialized anti-corruption seminars for certain categories of civil servants.³⁴

³⁴ During 2008-2011 there were held annual seminars: in 2008 (45 trainees, 40 training hours), 2010 (43 trainees, 24 training hours), 2011 (47 trainees, 40 training hours).

It was indicated that the Civil Service Agency jointly with the Ministry of Justice in 2005 developed a special Programme of civil servants training on anti-corruption legislation, which is being continuously implemented in the state authorities. Annually the anti-corruption topics are included in the Republican list of programmes for continuous training of civil servants abroad. In 2007-2008 more than 40 civil servants from central state authorities, including from the law enforcement agencies, were trained on these topics. Training seminars were held in the Lee Kuan Yew School of Public Policy in Singapore and Anti-Corruption Academy of Malaysia.

The Sectoral Programme of the Fight against Corruption in the Republic of Kazakhstan for 2011-2015 assigns the Civil Service Agency with development of a schedule of continuous anti-corruption trainings for civil servants (deadline – second quarter of 2012). It is recommended to envisage in the Sectoral Programme not only the development of the schedule of trainings but also holding of seminars as such with indication of their frequency and responsible bodies with a special emphasis on trainings for servants of the agencies which are most exposed to corruption.

Certain events in the field of training of civil servants are also envisaged in the institutional anti-corruption plans. For example, the plan of the Agency for Combating Economic and Corruption Crimes (April 2011) envisages holding of lectures and seminars for the financial police officers on anti-corruption issues, observance of the code of ethics. The Action Plan on implementation of the Programme of preventive control of corruption offences for 2006-2010 approved by the order of the General Prosecutor envisaged measures on formation of legal awareness of employees of prosecutor's offices in the field of observance of anti-corruption legislation and propaganda of intolerance for corruption occurrences. The Programme for the Fight against Corruption in the Internal Affairs Bodies of the Republic of Kazakhstan for 2011-2013 envisages implementation of measures for "propaganda of anti-corruption legislation among employees of internal affairs bodies, including with participation of non-governmental organizations", as well as holding seminars on issues of observance of discipline, legality and prevention of corruption.

Kazakhstan is **partially** compliant with this recommendation.

Monitoring of disciplinary councils

Previous Recommendation 3

Monitor the activities of the Disciplinary Councils with the view to improve their overall performance.

In September 2007 Kazakhstan was **largely** compliant with this recommendation.

The activity reports of the Disciplinary Councils on Civil Service Issues for 2009 and 2010, which were provided after the on-site visit, contain impressive figures: for example, in 2010 - Disciplinary Councils of the Civil Service Agency conducted 758 inspections based on complaints, 2,599 inspections on their own initiative; 1,489 persons were brought to disciplinary liability upon the councils' recommendations. The Councils also prepared 2,507 recommendations on strengthening discipline and held 1,333 seminars / meetings, roundtable discussions, briefings, conferences on anti-corruption issues. In 2010, 4,501 publications and presentations of members of the Disciplinary Councils were placed in printed and electronic mass media. In 2010 there were six meetings of the Board of the Civil Service Agency, where several heads of the Disciplinary Councils gave presentations and presented the results of activities of the Disciplinary Councils.

The very fact of existence of the mentioned statistics is positive, as well as inclusion in it of various useful data (number of complaints and inspections in response, inspections of own initiative, number of recommendations on bringing to liability, information on their execution, on imposed sanctions, etc.).

It was noted in the written comments by the Kazakh authorities, that on the basis of analysis of the activity results of the disciplinary councils, it was established that there are frequent violations of Article 12 of the Law on the Fight against Corruption, such as illegal favouring of legal entities and individuals in the course of preparing and taking decisions; provision of any assistance not envisaged in the law with respect to carrying out of entrepreneurial or any other activity connected with deriving of profit; repeated violation of the legal procedures for consideration of petitions of individuals and legal entities and taking other decisions on issues within their competence.

Kazakhstan is **fully compliant** with this recommendation.

3.2.5. Restrictions on receiving gifts

Previous Recommendation 24

Review and further specify provisions of the Law on the Fight against Corruption related to the receipt of gifts, improve the control of implementation of these provisions.

According to the first round of monitoring in September 2007 Kazakhstan was **fully** compliant with that recommendation.

Article 13 of the Law on the Fight against Corruption envisages such corruption offence as “acceptance of gifts or services in connection with performance of one’s state or similar functions or from persons who are dependant through service relations for overall patronage or connivance at service”. The prohibition to receive gifts also applies to family members. Those gifts which were received without knowledge of the respective person as well as gifts received by him in connection with performance of the relevant functions shall be handed over to the special state fund without compensation within seven days. A person who received the gifts has the right (subject to approval of the superior official) to buy them out from the said fund at the market retail prices effective in the relevant area. The proceeds received from sale of gifts are transferred by the special state fund to the republican budget. The Government Resolution of 2002 regulates issues of record-keeping, storage, appraisal and further use of the assets turned into the state property, including gifts. However, there is no information on the practice of handing over such gifts; therefore, it is impossible to evaluate effectiveness of this system.

Moreover, there are no detailed guidelines on receiving gifts, which would, for example, clarify which gifts are allowed (in particular, clarify the meaning of the phrase “in connection with performance of the relevant functions”), which actions trigger certain types of liability, etc.

Commission of the said corruption offence, unless it contains elements of a criminally punishable act, leads to dismissal from the office or termination of performance of state functions. Such sole sanction was envisaged by the amendments introduced by the Law of 29 December 2010. Previously such corruption offences were also sanctioned with demotion or imposition of another disciplinary sanction.

According to paragraph 2 of the Note to Article 311 of the Criminal Code, the receipt for the first time by a person authorized to perform state functions or by a person equated to him of property, the rights to property, or other material benefit, as a gift, in the absence of preliminary agreement for earlier committed lawful actions (omission of actions), if the value of such a gift did not exceed

two monthly calculation rates³⁵, is not recognized as a crime due to its small significance and is punished through administrative or disciplinary proceedings. The administrative liability (Article 533-1 of the Code of Administrative Offences) is envisaged for receiving personally or through intermediary of illegal material remuneration, gifts, privileges or services for actions (inaction) in favour of the persons providing them, if such actions (inaction) are within the official competence of the person authorized to perform state functions or of the person equated to him, unless the act contains elements of a criminally punishable act.

3.2.6. Post-employment restrictions

The Law of 29 December 2010 amended the Labour Code of the Republic of Kazakhstan (Articles 26 and 61) with a provision prohibiting employment in commercial organization of a person within one year after termination of his civil service, if during the period of performance of state functions the said person due to his official powers was exercising direct control in the form of inspection of activities of that commercial organization or activities of that commercial organization were directly connected with that person in accordance with his competence. In case of conclusion of an employment agreement with that person such agreement shall be terminated. These are progressive provisions which deserve praise. However, there are no provisions stipulating the procedure for control over their observance; for example, it is not specified, which body and how is authorized to raise an issue of termination of the employment agreement, there is no liability for violation of that restriction.

Furthermore, according to the Law on Joint Stock Companies (Article 33) an individual who was previously a civil servant and had by virtue of his official functions the powers of control and supervision over the company's activities on the part of the state, cannot be elected into the company's bodies within one year from the date of termination of such powers, with the exception of bodies of the company where not less than 10 percent of voting shares are owned by the State or the national management holding company. The set threshold of 10 percent seems to be extremely low and would exempt the substantial number of legal entities from this restriction; it is recommended to consider establishing such exemption only for companies where the State controls more than half of the shares.

3.2.7.-3.2.8. Reporting of violations and protection of whistleblowers

The Law No. 371-IV of 29 December 2010 introduced an obligation of civil servants to notify management or law enforcement bodies of corruption offences (Article 9 of the Law on the Public Service). Since this is one of the duties of civil servants, failure to observe this requirement may result in imposition of a disciplinary sanction on the civil servant.

Information on the practice of implementation of these provisions is unclear: the statistics of notifications by civil servants refers only to the number of offences "uncovered by the bodies themselves" and it is not clear, how many of them were uncovered due to notifications by civil servants.

Besides in 2009 the Law on the Fight against Corruption (Article 7) was supplemented with a clause that a person, who informed about the fact of corruption offence or otherwise facilitated fighting corruption, shall be awarded in accordance with the procedure envisaged by the legislation of the Republic of Kazakhstan. It is not known how this provision is implemented in practice. The Sectoral Programme of the Fight against Corruption in the Republic of Kazakhstan for 2011-2015, approved by the Government Resolution of 31 March 2011, instructed the Agency for Combating Economic and

³⁵ Approx. EUR 15.

Corruption Crimes (Financial Police) and other bodies to develop such mechanism of awarding in Q4 2011; although already in the Presidential Decree No. 793 of April 2009 the Government was instructed to adopt measures encouraging anti-corruption behaviour of citizens, including mechanisms of awarding citizens facilitating suppression and exposure of corruption offences.

Information on the person facilitating fight against corruption constitutes a state secret and is disclosed only upon the request of the Anti-corruption Commission under the President of Kazakhstan, prosecutor's offices, national security bodies, internal affairs bodies, tax inspections, customs and frontier bodies, financial and military police or court in accordance with the procedure determined by law. Disclosure of this information entails liability envisaged by law.

Article 7 of the Law on the Fight against Corruption provides that a person, who informed about the fact of corruption offence or otherwise facilitates the fight against corruption, is protected by the State. As was noted above, protection of whistleblowers is also envisaged in the Code of Ethics of Civil Servants; the body's management is obliged to protect whistleblowers from illegal persecution, negatively influencing further service activities of the civil servant, his rights and lawful interests. Even though non-observance of the Code of Ethics entails disciplinary sanctions, it seems that this provision is insufficient. It is necessary to envisage more detailed regulation of whistleblower protection in the Law on the Fight against Corruption or in the Law on the Civil Service (since whistleblowing may concern not only corruption offences specified by law), and also to include, if necessary, relevant provisions in the Labour Code and other legal acts.

Previous Recommendation 26

Review provisions of the Administrative Code, which establish administrative responsibility for false information about corruption, as the corruption facts are difficult to prove and information about them can be purposefully presented as intentional disinformation.

In September 2007 Kazakhstan was **not compliant** with this recommendation.

The Law of 21 July 2007 deleted Article 536 from the Code of Administrative Offences, which envisaged liability for false notification of the fact of corruption offence. At the same time the Code was supplemented with a new Article 334-1 with the similar content. The only difference was that the previous article was placed in the Chapter "Administrative Corruption Offences", while now it is put in the Chapter "Administrative Offences Infringing Public Order and Morality", which is more logical. The elements of the offence and possible sanctions (a fine in the amount from 100 to 200 monthly calculation rates³⁶ or an administrative arrest for the term of up to 30 days) remained unchanged. Like before, in accordance with Article 637 of the Code of Administrative Offences, the exclusive right to initiate cases on this administrative offences is vested in the prosecutor, which slightly reduces the risk of abuse of this provision.

Existence of liability for the such act and relatively severe sanctions may serve as a "chilling" factor and prevent reporting of corruption. Such measure appears to be disproportionate – harm from receiving and reacting to a false notice about corruption is less than non-notification of corruption facts, which may have serious consequences for public interests. Also existence of such offence creates conditions for concealment of corruption offences through prosecution of the whistleblower.

Kazakhstan remains **non-compliant** with this recommendation.

New Recommendation 3.2

³⁶ Approximately from EUR 700 to EUR 1,400.

Legal framework. To revise the existing legislative differentiation between administrative and political civil servants, in particular to substantially decrease the list of political servants, in order to ensure professionalism and real protection of administrative civil servants as well as law enforcement officers from political influence.

Recruitment and promotion. To continue reforming the system of recruitment and promotion of civil servants by establishing clear criteria for evaluation based on personal merits and qualifications; to eliminate possibility of occupying administrative positions without a competitive selection; to envisage in the law procedure for merit-based promotion and procedure for carrying out internal competitions.

Remuneration. To set clear statutory limitations on the amounts and frequency of additional remuneration (awards), which is not included in the basic fixed salary, and to envisage criteria for such awards in order to limit discretionary powers in taking decisions on such issues and to ensure transparency of such payments.

Conflict of interests. To develop and broadly disseminate among employees of state authorities practical guides on prevention and resolution of conflict of interests with due account of the specifics of work of certain authorities. To introduce practice of consulting employees with respect to observance of the regulations on conflict of interests, requirements of incompatibility and other restrictions both at the level of separate authorities and on a centralized basis (by the authorized body in the field of civil service). To carry out monitoring and analysis of implementation of the regulations on conflict of interests and restrictions in the civil service.

Internal control. To strengthen preventive work of the internal control (security) units, including work on raising awareness of anti-corruption regulations, assistance in prevention and resolution of conflicts of interests. To ensure methodological support of and guidance to such units.

Declarations of assets. To amend legislation and practice of asset and income declarations in order to ensure their effectiveness, in particular, to envisage verification of part of declarations (for example, of high-level administrative civil servants, political civil servants, judges, prosecutors, employees of bodies which are most prone to corruption). To envisage mandatory publication of data from declarations of the high-level officials, political servants, judges, as well as availability of all other declarations of public servants upon request.

Codes of ethics and anti-corruption training. To define in the Code of Ethics the observance of the rule of law principles and ensuring professionalism of civil service as the main duties of civil servants; to revise provisions on obligatory refutation of public accusations; to ensure regular and practical training on observance of the codes of ethics (codes of conduct). To create a system of annual education and continuous training on the issues of preventing and combating corruption with the focus on practical implementation of the legislation.

Restrictions in receiving gifts. To develop and disseminate detailed guidelines on implementation of provisions on gifts in order to clarify established restrictions and liability for their violation. To carry out a monitoring of implementation of provisions on gifts and to develop proposals on their improvement.

Protection of whistleblowers. To stipulate in the legislative acts detailed provisions on protection of whistleblowers, in particular, effective guarantees of their protection from oppression and persecution. Review provisions of the Code of Administrative Offences, which establish administrative liability for reporting false information about corruption, as the corruption facts are difficult to prove and information about them can be purposefully presented as intentional

3.3. Promoting transparency and reducing discretion in public administration

3.3.1. Anti-corruption screening

According to the changes introduced into the Law of the Republic of Kazakhstan "On Normative Legal Acts" in the Republic of Kazakhstan there is performed an obligatory scientific anti-corruption screening of draft laws submitted for consideration of the Parliament, draft normative acts of the Government (since 1 January 2010), normative acts of ministers and other heads of central state authorities, central state authorities and Central Election Commission of the Republic of Kazakhstan, as well as normative decisions of local authorities and officials (since 1 January 2011).

The screening has scientific nature and is carried out by scientific (academic) institutions, whose services are procured on the basis of tenders and are paid for by the republican budget. In 2011 such institutions were the Kazakh State Law Institute and the Scientific and Research Institute of Legal Monitoring. The methodology of anti-corruption screening was approved at the meeting of the Inter-departmental Commission for Improvement of Legislation in the Anti-Corruption Area of 17 September 2007.

According to information provided by the Ministry of Justice of the Republic of Kazakhstan, as of the end of June 2011 there were examined 16 draft laws and over 1,000 acts of the Government and central state authorities. Out of 1,500 comments 1,300 (87%) were taken into account, the rest were rejected.³⁷

Therefore, in Kazakhstan there is a system of assessment of the degree to which draft legal acts foster corruption. However, legislative initiatives and draft normative legal acts of the President of Kazakhstan are not subject to obligatory anti-corruption screening. Besides, the system of anti-corruption screening could have been more efficient if wider publicity of that process was ensured. In particular, it would be advisable to publish draft laws with supplementary materials, including the results of anti-corruption screening, on the web-site of the Parliament. Likewise, it is necessary to consider the possibility of publishing draft decisions of the Government and central state authorities accompanied with the results of their anti-corruption screening on the web-site of the Ministry of Justice or other respective state authorities.

It is worth noting that institutions, which are authorized to perform anti-corruption screening, are identified annually and are often changed. Therefore, there is a risk of decreasing effectiveness of anti-corruption screening, since the experience gained at the previous institutions, may not be used in subsequent institutions. In some countries using anti-corruption screening as a tool of anti-corruption policy (for example, Moldova, Russia, Ukraine), anti-corruption screening is entrusted to a state authority – as a rule, it is the Ministry of Justice. Such approach allows to use the gained experience to the best possible extent, to ensure uniformity of practice, preparation of qualified experts. Moreover, screening then changes its status from scientific to official, which alters its standing and strengthens the requirement of taking its results into account. Therefore, it seems advisable to consider a possibility of assigning the function of conducting anti-corruption screening to one of the state bodies.

³⁷ Source: <http://www.zakon.kz/pravovye-novosti/217907-antikorrupcionnaja-jekspertiza-vyjavila.html>.

It is also recommended to supplement the Law on Normative Legal Acts with provisions on the consequences of negative results of anti-corruption screening, *i.e.* to envisage special procedures in case it is identified that a draft legal act contains corruption-prone provisions. Such provisions may envisage obligation of the drafter to take comments into account; if respective comments are rejected such decision should be substantiated; screening results should be appended to the draft legal act when it is submitted to the authorized body for adoption.

Also it is necessary to note the work of the Inter-departmental Commission for Improvement of Legislation in the Anti-Corruption Area (hereinafter - "Commission"). The main tasks of the Commission is to develop proposals on amending effective laws with respect to corruption-prone provisions, as well as in part of combating corruption. The results of the performed analysis are sent to state authorities for joint analysis of the proposals and taking further decisions on necessity of introduction of the respective amendments into legal acts. The Commission meets on a monthly basis.

3.3.2. Simplifying regulations

In general, during the recent years Kazakhstan achieved a substantial progress in the sphere of de-regulation. In particular, this is reflected in the global indexes of business environment. According to the World Bank "Doing Business" Index Kazakhstan was ranked in the Top-10 world leaders on simplifying business regulation over the last five years (together with Georgia and Kyrgyzstan).³⁸ According to the 2011 rating Kazakhstan is on the 12th place (out of 25 countries) in the region of Eastern Europe and Central Asia. In the global 2011 rating Kazakhstan moved upwards by 15 positions compared to the previous year – the biggest jump among all countries during that period (jumped from 86th place in 2006 to 59th in 2011). More detailed information on Kazakhstan's rank in the 2011 rating (out of 183 countries) by topics of the Index is shown below in the table.³⁹

	2011	2010	Change
Starting a business	47	85	+38
Dealing with construction permits	147	156	+9
Registering property	28	29	+1
Getting credits	72	69	-3
Protecting investors	44	57	+13
Paying taxes	39	53	+14
Trading across borders	181	182	+1
Enforcing contracts	36	36	-
Closing a business	48	54	+6

Competitiveness rating of Kazakhstan calculated by the World Economic Forum remains approximately on the same level (taking into account the change in the number of analyzed countries)⁴⁰ and Kazakhstan holds one of the leading places among the members of the Istanbul Anti-corruption Action Plan⁴¹. However, by key indicators of the state regulation efficiency Kazakhstan does not occupy the leading ranks yet (see table).

³⁸ Source: [http://www.doingbusiness.org/reforms/~media/FPDKM/Doing%20Business/Images/Features/5-years.gif](http://www.doingbusiness.org/reforms/~/media/FPDKM/Doing%20Business/Images/Features/5-years.gif).

³⁹ Source: <http://www.doingbusiness.org/data/exploreeconomies/kazakhstan>.

⁴⁰ 72nd place out of 139 countries in the report for 2010-2011, 67th place out of 133 countries in 2009-2010 and 66th place out of 134 countries in 2008-2009.

⁴¹ Azerbaijan – 57th place, Kazakhstan – 72nd, Ukraine – 89th, Georgia – 93rd, Armenia – 98th, Tajikistan – 116th, Kyrgyzstan – 128th.

Indicators of the “Global Competitiveness Report” rating, place among 139 countries⁴²:

	Burden of state regulation	Protection of property rights	Transparency of the state policy-making	Burden of customs procedures
Azerbaijan	32	82	58	108
Armenia	91	104	53	138
Georgia	4	116	33	39
Kazakhstan	73	110	75	107
Kyrgyzstan	84	131	95	128
Tajikistan	43	95	101	104
Ukraine	125	132	114	131

Also according to the Global Competitiveness Report 2011 business representatives named five most common barriers for conducting business in the country: corruption (1st place), inefficient state machinery (4) and tax regulation (5).

A number of improvements in the sphere of state regulation of entrepreneurship and provision of public services is connected with the broad use of information technologies. For example, at the “E-Government” portal (www.egov.kz) it is possible to register a legal entity being a small business and conducting its activities on the basis of the sample charter.⁴³ On the web-site of the Committee for Legal Statistics and Special Registrations of the General Prosecutor’s Office an entrepreneur, who is being inspected, using the registration number shown on the inspection act can verify authenticity of the registration, name of the authority, subject and period of inspection as well as information on the inspecting authority (see, however, further comments on the inspection procedures themselves). Reportedly this information can also be obtained by sending an SMS to a particular number.⁴⁴ In the first quarter of 2011 there were issued 1,079,000 electronic certificates (notes) through the E-Government portal (1,671,000 certificates during the whole 2010). As of mid-April 2011 there were issued 498,000 electronic digital signatures through the portal.⁴⁵ The Law “On Administrative Procedures” was supplemented with the term “electronic public service”. It was planned to introduce from 1 July 2011 electronic registration of applications and notifications of crimes submitted to all law enforcement bodies in the database of the Committee for Legal Statistics and Special Registrations of the General Prosecutor’s Office.⁴⁶ This and other novelties are commendable.

The said achievements in the field of improvement of public services and introduction of the e-governance systems are confirmed by the international E-government Development Index, in which Kazakhstan moved up from 81st place in 2008 to 46th place in 2010, as well as E-participation Index, where Kazakhstan occupies 18th place moving up by 80 ranks compared to 2008.⁴⁷ It should be noted that as of beginning of 2011 around 33% of the country’s population had access to the Internet.⁴⁸

⁴² Source: <http://gcr.weforum.org/gcr2010/>.

⁴³ Source: <http://www.inform.kz/rus/article/2390884>.

⁴⁴ Source: <http://www.kazinform.kz/rus/article/2370102>.

⁴⁵ Source: <http://www.inform.kz/rus/article/2370695>.

⁴⁶ Source: <http://www.inform.kz/rus/article/2369301>.

⁴⁷ Source: <http://www2.unpan.org/egovkb/ProfileCountry.aspx?ID=87>.

⁴⁸ Source: <http://opennet.net/research/profiles/kazakhstan>.

De-regulation in Kazakhstan is envisaged in strategic policy documents (for example, in the annual addresses of the President). The Concept of Improvement of the Permit System of the Republic of Kazakhstan for 2009-2011 was approved in 2008.⁴⁹

It should be noted that the main document determining anti-corruption policy for the next several years (Sectoral Programme for the Fight against Corruption in the Republic of Kazakhstan for 2011-2015) identifies as one of the objectives further improvement in this sphere. Among the outcome indicators for implementation of the Programme it is noted that the operating cost connected with registering and running a business (obtaining permits, licenses, certificates, accreditation, consultations) will decrease by 30% in 2015 compared to 2011; the number of electronically issued licenses out of the total number of licenses will be gradually increasing (from 7% in 2011 to 100% in 2015); the level of satisfaction of individuals and legal entities with the quality and accessibility of public services will increase from 52% in 2011 to 60% in 2015. The descriptive part of the Programme also indicates that the most corrupt areas in Kazakhstan are public procurement, use of subsoil resources, land relations, construction, customs and tax spheres. However, the Programme does not envisage special measures for preventing and reducing corruption level in these spheres. Even though some of these issues may be covered by the institutional anti-corruption action plans, the main directions and measures at the governmental level should be included into the nationwide programme.

Business representatives noted adoption in January 2011 of the **Law on the State Control and Supervision**⁵⁰, certain provisions of which, in their opinion, contradict to the Law on Private Entrepreneurship. It should be noted that overview of the Law on the State Control and Supervision indeed calls for some remarks. Firstly, it appears principally incorrect to merge control over private entities with internal control in the state authorities. The first type of control is a type of administrative procedures, is regulated by the respective principles and requires availability of the whole mechanism of protection of private entities; while the second type of control is related to the internal functioning of the state machinery and is subject to completely different rules. Secondly, the criterion for separation of “control” and “supervision” is not clear, namely the use of “law restricting measures of operative reaction”, which are not defined in the Law. Thirdly, there is no definition of “other forms of control and supervision”, which at the same time do not require prior notification of the entity subject to inspection and registration with the Legal Statistics Committee. Fourthly, there are exemptions from the Law’s regulation placed throughout its text, which complicates implementation of the Law and also puts in question the necessity of such legal act, if at the end it applies only to a small number of relations. Fifthly, the Law duplicates provisions of the Law on Private Entrepreneurship, which contains such chapters as “State regulation”, “State control over private entrepreneurship” (which contains, among others, several detailed articles on the procedure for carrying out inspections), “Responsibility of state bodies and officials in the course of state control, licensing”. Overall, adoption of the new Law introduces a significant mess in the issues of state control of entrepreneurial activity, which is exacerbated by new Law’s vague provisions and sphere of regulation.

Also, as far as the monitoring group is aware, in July 2009 (under the Law No. 188-IV) there were introduced numerous changes to the legislation of Kazakhstan aimed at improvement of entrepreneurship conditions and limitation of powers of controlling bodies. In particular, the above-mentioned sections of the Law on Private Entrepreneurship were put in a new wording. This gives rise to additional questions regarding adoption in January 2011 of the new law, which regulates the same issues. Such frequent amendments in the legislation on entrepreneurship and administrative

⁴⁹ Approved by the Government’s Resolution of 27 November 2008 No. 1100.

⁵⁰ Law No. 377-IV of 06 January 2011.

procedures do not foster legal certainty and normal conduct of commercial activities. This also contradicts the declared policy of de-regulation and simplification of the state regulation of the private sector.

It is necessary to pay attention also to another initiative, which may have a negative effect on the system of legal regulation in Kazakhstan. In May 2011 at the meeting of the Legal Policy Council at the President of the Republic of Kazakhstan there was approved the Concept of the **Entrepreneurial Code** of the Republic of Kazakhstan. Such acts, which were adopted in several ex-USSR countries, are based on a mistaken concept of a separate legal branch of economic law, which is based on the principles of the state-planned economy. Experience of other countries (for example, Ukraine) shows that such acts do not have any practical advantages but rather lead to confusion and inconsistency in the system of legislation by duplicating provisions of other legal acts. The respective relations should be regulated by civil law based on the principles of optionality (free choice) and equality of parties, as well as by separate acts on the state regulation (for example, antimonopoly legislation). The serious criticism of this idea on the part of the legal community of Kazakhstan appears to be justified.⁵¹ Introduction of a parallel legal regime for regulating private law relations may result in violation of the principle of legal certainty and therefore facilitate corruption.

Anti-corruption strategy for tax and customs bodies

Previous Recommendation 32

Devise and adopt a strategy for the tax and custom services which stresses the importance of corruption prevention and proclaims corruption as a serious violation of working responsibilities leading to obligatory termination of employment. Establish and maintain effective internal control in customs that belongs to a highly vulnerable area with respect to corruption.

In September 2007 Kazakhstan was **largely** compliant with this recommendation.

For the purpose of implementation of the Action Plan for the State Programme of the Fight against Corruption each state body adopted institutional action plans reflecting measures for combating corruption taking into account the specifics of each body. The Order of the Tax Committee of the Ministry of Finance of 26 September 2007 No. 689 approved the Anti-corruption Strategy in the Tax Authorities and a detailed List of Corruption-Prone Spheres in Tax Relations and Measures for Elimination of Corruption Occurrences Therein. The Preamble to the Anti-corruption Strategy in the Tax Authorities explicitly mentioned that it was drafted taking account of recommendations of the OECD Istanbul Anti-corruption Action Plan.

The Customs Control Committee of the Ministry of Finance developed an 'Algorithm for Counteracting Risks in Customs Issues, where each risk was set forth in the following sequence: description of the risk; specification of the forms of offence; proposed measures for reducing their influence on the business process. Besides, the Order of the Customs Control Committee of 24 September 2010 No. 301 approved the Plan of Measures for Reducing Corruption in the Customs Bodies of the Republic of Kazakhstan for 2010-2011, which includes measures in the following directions: drafting of legal acts with clear regulation of requirements regarding quantity, contents, deadlines for enforcing procedures; automation of the customs procedures; introduction of new technologies; strengthening of internal control.

This progressive experience of the Tax Committee and the Customs Control Committee should be extended to other areas of state activities exposed to high corruption risks.

⁵¹ Source: <http://www.zakon.kz/pravovye-novosti/220595-28-izvestnykh-juristov-obratilis-s.html>.

Within the Tax Committee there was established an Internal Control Unit for the purposes of prevention of corruption offences and carrying out other anti-corruption measures in the tax bodies. Also in the tax departments of regions, cities of Astana and Almaty there were established the internal control units with similar functions and vertical subordination to the Tax Committee of the Ministry of Finance. Plan of Measures for Reducing Corruption Level in the Customs Bodies of the Republic of Kazakhstan for 2010-2011 covers particular actions, deadlines, responsible executors from the structural units and forms of completion. The internal control units also exist within the system of customs bodies. More detailed information on activities of the internal control units was provided above (sub-section 3.2.4. of this report).

Kazakhstan is **fully** compliant with the previous recommendation.

3.3.3.-3.3.6. Administrative procedures

Proper regulation of the administrative procedures and establishment of efficient administrative justice are very important for prevention of corruption by reducing opportunities for corruption and facilitating detection of corruption acts. Administrative procedures ensure legality in actions of state authorities and administrative protection of persons, while administrative justice provides for an independent judicial control over the public administration and ensures judicial protection and restoration of violated rights and freedoms.

Kazakhstan was one of the first countries in the CIS which adopted the special **law on the administrative procedure** (Law “On Administrative Procedures” of 27 November 2000). However, the scope of its regulation does not fully correspond to the generally accepted approaches to such legal acts. Even after introduction of major changes to the Law in 2007, only its small part regulates issues, which are directly related to administrative procedures as such, *i.e.* activity of the administrative body as regards consideration of administrative cases and adoption of administrative acts, including those related to provision of administrative services. The major part of the Law still regulates issues of organization of work of the state apparatus. Thus regulation of the administrative procedures is quite often carried out by sectoral laws and subordinate legislation. This leads to disunity and inconsistency of legislation and violates such fundamental principles of administrative law as legality and legal certainty. The Law itself (Articles 2 and 24) minimizes its scope of regulation, by defining it as issues not regulated by other laws (“The administrative procedures envisaged by this Law in part not regulated by legal acts shall apply to the activities...”). Whereas such law should be the principal act that would comprehensively and holistically regulate the administrative procedure and, therefore, it is often adopted in the form of a code. Quite often provisions of the Law contradict to other legal acts, for example, the Law “On the Procedure for Consideration of Petitions of Individuals and Legal Entities” (see below the analysis of legislation on access to information).

The Law does not stipulate such basic principles of administrative procedures as principles of procedural fairness, impartiality, openness and transparency, reasonable terms of consideration, justification of decisions, etc. Administrative proceedings on administrative cases is regulated incompletely, without proper detalisation and setting of procedural rights of persons (for example, the right to be notified about consideration of the case, to be heard before such consideration). Only one article is dedicated to appeal and it envisages only the possibility of filing a complaint to the superior state body (superior official) or to a court as well as the terms for appeal.⁵²

⁵² To compare the Law with the respective standards one can refer to the documents of OECD/EU Programme SIGMA, for example: “Checklist for a General Law on Administrative Procedures”, 2005. Source: http://www.oecd.org/document/24/0,3746,en_33638100_34612958_3806_6008_1_1_1_1,00.html. See also: V.Timoshchuk, Review of the administrative procedural legislation of some foreign states. Legal Policy Research Center, Almaty, 2010. Source: http://www.lprc.kz/ru/images/016_review_adm_legislation.pdf.

The necessity of reforming legislation on administrative procedures is acknowledged at the highest state level (for example, in the Concept of Legal Policy of the Republic of Kazakhstan for the period from 2010 to 2020⁵³). For this purpose the Institute of Legislation of the Republic of Kazakhstan drafted a new law on administrative procedures, which was not yet submitted for consideration of the Parliament.⁵⁴ It is necessary to accelerate work on development and adoption of this law with due account of international experts' comments and best practice.

The procedure for appealing against decisions, actions or inaction of administrative bodies in Kazakhstan is regulated by the sub-section "Special Lawsuit Proceedings" of the Civil Procedural Code (Chapters 25-29 of the Civil Procedural Code). Thus, Kazakhstan belongs to a small group of states, which regulate **administrative justice issues** within the framework of another type of adjudication, namely civil proceedings.⁵⁵ The respective sub-section defines the specifics of the civil proceedings in cases related to: challenges against decisions, actions or inaction of administrative bodies; challenging legality of normative legal acts; on protection of electoral rights; challenging decisions, actions (inaction) of local executive authorities infringing rights of citizens to participate in criminal proceedings as a jury member; on cases of challenging decisions of bodies (officials) authorized to consider cases of administrative offences. These categories of cases are considered by general courts. Although in Kazakhstan there are specialized administrative courts, they consider cases on administrative offences and therefore they are not administrative justice bodies engaged in administrative adjudication as it is generally understood.

Such approach to the regulation does not fully comply with international standards, since civil and administrative proceedings are based on different principles and the proper protection of rights of private persons who challenge actions of the public administrations requires a special approach. For example, adversarial trial is not typical for the administrative justice, a court may at its own motion demand evidence; burden of proof rests with the state body which must prove observance of the statutory requirements. Therefore, it is welcomed that the Concept of Legal Policy of the Republic of Kazakhstan for the period from 2010 to 2020 approved by the President of Kazakhstan refers to the required reforms in this sphere. The Concept mentions importance of development of "administrative procedural law, the apex of which would be adoption of the Administrative Procedural Code. At the same time it is necessary to clearly define the scope of regulation of the administrative procedural legislation". It is also mentioned that in "the context of development of the administrative procedural law it is necessary to consider an issue of administrative justice solving legal disputes arising from public law relations between the State and a citizen (organization). It means that it is necessary to consider an issue of procedural separation and legitimization of the procedure for resolving public law disputes. Therefore, administrative adjudication should become a fully-fledged form of administration of justice alongside with the criminal and civil proceedings". These correct and extremely important provisions of the Concept should be implemented through adoption of a stand-alone Administrative Adjudication Code and establishment of specialized administrative courts, which would consider claims against public administration (but not impose administrative sanctions on individuals).

⁵³ Approved by the Presidential Decree of 24 August 2009 No. 858.

⁵⁴ See Opinion on the draft law prepared by the OSCE/ODIHR experts in December 2010. Source: <http://www.legislationline.org/ru/documents/id/16205>.

⁵⁵ See, for example, R.Kuybida, Review of legislation on administrative justice in the former USSR states. Legal Policy Research Center, Almaty, 2010. Source: http://www.lprc.kz/ru/index.php?option=com_content&task=view&id=188.

The draft Administrative Adjudication Code was developed by the Government of Kazakhstan and submitted to the Parliament in 2009 but was withdrawn in August 2010. The draft was rightly criticized by national and foreign experts, as it proposed to combine two principally different and even incompatible subjects of regulation – court proceedings on cases of administrative offences and court proceedings on claims against public administration. The former is the part of administrative tort law and in substance has many similar characteristics with the criminal proceedings (“liability of a person before the State”); while the latter is aimed at settlement of public law disputes with the state authorities and is adapted to the needs of judicial protection of rights and interests of individuals from infringements by the public authorities⁵⁶ (“liability of the State before a person”). As for administrative offences within the administrative adjudication there can be considered only cases of appeal against decisions of the administrative authorities on imposition of administrative sanctions. Therefore it is strongly recommended to separate court proceedings on cases of administrative offences and on cases of administrative adjudication.

New Recommendation 3.3

- **To envisage mandatory anti-corruption screening of all draft normative acts. To consider a possibility of placing on the web-sites of the respective state authorities of draft laws and draft normative acts of the Government, other central state authorities accompanied with conclusions of the anti-corruption screening. To consider a possibility of assigning to a state authority functions of carrying out anti-corruption screening.**
- **To revise the Law on the State Control and Supervision, namely to bring it in line with the Law on Private Entrepreneurship, to eliminate inaccuracies and clearly define its sphere of regulation, which should not cover internal control issues, to put emphasis on protection of rights of the inspected entities from possible infringements by the inspection bodies.**
- **To bring the legislative act on the administrative procedure in line with international standards of regulation of the procedure for considering administrative cases.**
- **To reform the system of administrative justice in accordance with international standards and best practice, namely to adopt the Administrative Adjudication Code, which should not regulate issues of bringing to administrative liability, and to set up specialized administrative courts for consideration of private persons’ claims against public administration.**

3.4. Public financial control and audit

Previous Recommendation 30

Address corruption risks that are inherent in the organizational environment with appropriate internal control systems and identify the processes, controls and measures needed to mitigate those risks. Strengthen control environment and established such information system that can assist monitoring activities and financial reporting process throughout all public sector entities. Require internal auditors to conduct proactive auditing to search for corruption offences. Ask an independent external auditor to assist management by providing an evaluation of the entity’s process for identifying, assessing, and responding to the corruption risks. Ensure coordinative functioning of financial control and auditing bodies to facilitate revealing of corruption offences, and increase accountability for anti-corruption responsibilities and duties.

⁵⁶ See detailed analysis of the draft Code prepared for the Legal Policy Research Center, “Problems of combining norms on administrative judicial proceedings with the rules of considering cases of administrative offences in the draft Administrative Adjudication Code of the Republic of Kazakhstan”, R.Kuybida, April 2010. Source: http://lprc.kz/ru/images/docs/problemy_.doc.

In September 2007 Kazakhstan was **partially** compliant with this recommendation.

Since the first round of monitoring the Republic of Kazakhstan adopted the following key decisions in order to strengthen the financial control environment:

- adopted a new Budgetary Code (Section 7 “Public control”), which set general framework of the public financial (external and internal) control, defined the system of public financial control bodies, their competence, principles and basics of carrying out of control; in accordance with this section each state body established internal control units, which organization-wise are independent from other structural units, subordinated and accountable only to the highest manager of the state authority;
- approved by the Presidential Decree the Public Financial Control Standards, which establish uniform requirements to public financial control; observance of the Standards is controlled by the Accounting Committee. The Financial Control Committee of the Ministry of Finance carries out control over observance of the Standards by internal control units;
- adopted the Rules for conducting external public financial control and the Rules for conducting internal public financial control on the republican and local levels.

The provided information shows that the financial control in the Republic of Kazakhstan is carried out by the public financial control bodies for the purposes of detection, elimination and prevention of violations by the objects of control of the budgetary and other legislation. Public financial control is divided into internal and external control carried out at the republican and local levels of the public management depending on the respective budgetary level. The Budgetary Code serves as a legal basis for the public financial control. The system of public financial control bodies consists of:

- the Accounting Committee for control of execution of the republican budget, which is the supreme public financial control body, carrying out external control of implementation of the republican budget; it is directly subordinated and accountable to the President of the Republic of Kazakhstan;
- audit commissions of maslikhats, which perform external public financial control on the local level. With a view to further ameliorate the external financial control on the local level there was adopted the Law No. 465-IV of 21 July 2011 “On Inserting Amendments in Certain Legislative Acts of the Republic of Kazakhstan regarding the Issues of Improvement of the External State Financial Control”;
- the Financial Control Committee of the Ministry of Finance being the internal control body authorized by the Government of Kazakhstan to carry out public internal financial control on the republican level;
- internal control units of the central state authorities and local executive authorities, which are financed from regional budgets, budgets of cities of the republican standing, capital (hereinafter - the “internal control units”).

The Financial Control Committee has 16 territorial divisions, which are legal entities in the form of the state establishment that are established and liquidated by the Government of Kazakhstan. They include financial control inspections (territorial divisions of the inspections of the Financial Control Committee) responsible for regions and cities of Astana and Almaty subordinated and accountable to the Committee.

In accordance with the provided legislation there are no **internal audit** bodies. Representatives of the state authorities mentioned internal audit in part of financial activities, which is performed by the public financial control bodies, but this does not comply with the internal audit principles; there

is no regular internal audit that is carried out in accordance with international standards. Internal control, for which the head of organization is responsible in accordance with international standards, is not regulated in the Republic of Kazakhstan.

In accordance with the legislation of the Republic of Kazakhstan public financial control is divided into the following types:

- 1) compliance control – evaluation of compliance of activities of the object of control with requirements of the budgetary and other legislation;
- 2) control of financial reporting – evaluation of reliability, justification and timeliness of compiling and filing of financial reports by the object of control;
- 3) efficiency control – evaluation, which is performed, in particular, on the basis of compliance control and control of financial reporting, of achievement by the state authorities of direct and final results envisaged in their strategic plans, implementation of the state and budgetary programmes, territorial development programmes, provided public services, use of connected grants, public and publicly guaranteed loans, state guarantees and public assets, as well as comprehensive and objective analysis of influence of activities of the state body and entities of the quasi-state sector on the economic and social development or individual sector of economy, other areas of state management.

Uniform requirements for the public financial control are determined in the public financial control standards which are developed by the Accounting Committee together with the Financial Control Committee and approved by the President of Kazakhstan. The principles of the public financial control include the principles of independence, objectivity, reliability, transparency, competence and openness. The public financial control standards are obligatory for implementation by all public financial control bodies. According to information provided by the Kazakh authorities, in order to strengthen discipline of the budgetary process participants and to ensure state control of funds transferred to entities of the quasi-state sector, a draft Law “On Inserting Amendments in Certain Legislative Acts of the Republic of Kazakhstan in order to Strengthen Responsibility of the Budgetary Process Participants, Recipients of Budget Funds and Raise Efficiency of the Budgetary Procedures” was developed. This draft law provides for adoption of a classification of violations, which will ensure transparency in relations of controllers and controlled entities.

The public financial control bodies subject to prior agreement carry out joint activities, exchange information on plans and performed control measures, and also exercise control together with other state authorities. They mutually acknowledge the results of control in case of compliance of control acts with the public financial control standards.

Non-scheduled control is exercised upon orders of the President, Government, authorized state authorities, inquiries of Parliament’s members.

Public internal financial control bodies (Financial Control Committee of the Ministry of Finance and internal control units) have powers to exercise subsequent (*ex post*) control over actual results and are responsible for control of the use of budgetary funds as prescribed by the budget, thus controlling budgetary spending. Representatives of the Republic of Kazakhstan noted that preliminary and current control is exercised directly by the financial services of the state institutions as well as the financial service of the budgetary programmes’ administrator, which include the state institution; distribution of tasks on approval (taking decisions), implementation, supervision, accounting and control are specified in the regulations of the respective structural units, which are responsible for performance of these functions.

The Financial Control Committee exercises mainly the following control: of compliance of use of funds from the republican and local budgets with the legislation of the Republic of Kazakhstan; reliability and correctness of accounting and reporting carried out by the objects of control; compliance with the public procurement legislation of the Republic of Kazakhstan and others. The Committee also exercises control over compliance by the internal control units with standards, renders methodological support to internal control units, co-ordinates their activities, organizes education and continuous training of employees of internal control units. Also the Committee is planning to introduce remote control and to this end, within implementation of the E-Government and E-Minfin (Finance Ministry) concepts, to integrate information systems of the Ministry of Finance (in particular, to integrate information system "Financial control" with systems of the Treasury and Tax Committee). The budget of the Financial Control Committee for 2011 amounts to 239,945 mln. tenge (for territorial divisions – 1,476,734 mln. tenge); number of staff – 85 persons (in territorial divisions – 731 persons).

In 2008 the Financial Control Committee performed 11,221 control measures (examinations) (in 2009 – 11,069, in 2010 – 9,476 examinations) for compliance, financial reporting; there were detected violations of the budgetary legislation in the amount of 136,018.7 mln. tenge (in 2009 – 146,489.9 mln. tenge; in 2010 – 230,086.6 mln. tenge), as well as violations of the public procurement legislation in the amount of 255,469.9 mln. tenge (in 2009 – 208,386.4 mln. tenge; in 2010 – 199,026.9 mln. tenge).

Every state body established an internal control unit which is independent from other structural units, subordinated and accountable only to the highest manager of the state body. The internal control units carry out internal control by areas of activity of the state body in order to increase quality and productivity of its work; evaluate functioning of the management system in the state body, its territorial divisions and subordinated organizations, provide recommendations to the highest manager of the state body on its improvement; perform examination of compliance of the state body with the budgetary and other legislation of the Republic of Kazakhstan; exercise control over implementation of strategic and operational plans of the state body, evaluate results; exercise control over reliability and correctness of accounting and reporting performed by the state body; take measures for detection, suppression and prevention of violations with the use of funds from the republican and/or local budgets in accordance with legislation of the Republic of Kazakhstan; and others.

According to the provided information, the structure and number of staff of the internal (financial) control units are diversified: there are two persons in the General Prosecutor's Office, while in the Ministry of Internal Affairs the number of staff of the internal control unit (which is called Control and Audit Department) amounts to 70 persons (in 2009 there were conducted 225 control measures; in 2010 - 222 examinations).

According to the Rules for Conducting Internal Public Financial Control, which are approved by the Government's Resolution, based on the results of control measures in case of detection of elements of crimes or administrative offences the control materials should be submitted to the law enforcement bodies. During the last three years the law enforcement bodies received no control materials from the internal control units upon completion of examinations.

No information was provided about employees working in other financial control departments (mentioned above), about exercising of different types of control during the last three years (separately by the control bodies), number of detected illegal acts, examinations with respect to fraud with the budgetary funds or corruption, about annual report of the Financial Control Committee of the Ministry of Finance (including evaluation of activities of the internal control units).

The current budgetary legislation of the Republic of Kazakhstan does not envisage such type of control as control with respect to prevention of corruption. The state financial control authorities do not evaluate procedures for detection of and response to corruption risks. Internal control as a part of the public financial control system is focused mainly on the financial control or inspection activities (*ex post* control in order to detect violations in the budgetary organizations). Functions of the Financial Control Committee of the Ministry of Finance (including territorial divisions of inspections) and of the internal control units partially coincide. It is necessary to start working on establishment of internal audit units in the state authorities, which would evaluate the internal control system, for which the head of organization is responsible. It is necessary to specify the main directions of reforms in the area of the public financial control to establish clear division of key functions, such as internal and external audit, internal control, financial inspections.

Kazakhstan is **largely** compliant with this recommendation.

Previous Recommendation 31

Review current status and position of the Accounting Committee and consider possibilities to develop it into an independent institution subordinated to the Parliament, in accordance with the Lima declaration and INTOSAI auditing standards.

In September 2007 Kazakhstan was **partially** compliant with this recommendation.

According to legislation (Budgetary Code, Section 7 “Public control” and others) the Accounting Committee is the supreme public financial control body exercising external control over implementation of the republican budget, it is directly subordinated and accountable to the President of the Republic of Kazakhstan (the public financial control system of the Republic of Kazakhstan is described above in detail). The total number of employees of the Accounting Committee is 95 persons. The budget of the Accounting Committee for 2011 is 632 mln. tenge.

In accordance with legislation of the Republic of Kazakhstan the public financial control for all control bodies is divided into the following types: compliance control, control of financial reporting and efficiency control. Legislation also provides that the main tasks of the Accounting Committee are the following:

- control over observance of requirements of the budgetary legislation and other legal acts regulating issues of implementation of the republican budget;
- execution of orders of the President of Kazakhstan on issues related to implementation of the republican budget and to exercising of the public financial control, as well as other separate orders of the President of Kazakhstan;
- control over completeness and timeliness of the republican budget revenues, as well as over refunds from the republican budget, efficiency of the tax and customs administration;
- efficiency control, control of financial reporting and compliance control with respect to use of the republican budget funds;
- control over reliability and correctness of accounting and reporting carried out by the controlled entities, control of implementation of strategic plans of the central state authorities, public and budgetary programmes, compliance control over the public procurement legislation of the Republic of Kazakhstan, evaluation of execution of the republican budget, and others.

In the course of control activity the Accounting Committee exercises control over observance of the Financial Control Standards by local authorized bodies of external control over execution of local budgets, the Financial Control Committee of the Ministry of Finance on internal control, as well as by internal control units. The Accounting Committee also determines the procedure for exercising external public financial control, develops public financial control standards, conducts analyses and researches, provides methodological guidance and implements programmes in the sphere of public financial control, introduces recommendations on improvement of the budgetary and other legislation of the Republic of Kazakhstan, provides methodological support to audit commissions of maslikhats, organizes education and continuous training of the public financial control employees. Based on results of control measures, in case of detection of elements of a crime or an administrative offence, the control materials are submitted to the law enforcement bodies.

In 2008 the Accounting Committee conducted 4 compliance control measures (examinations) (7 examinations in 2009, 23 examinations in 2010); 31 efficiency control measures (examinations) (38 examinations in 2009, 23 examinations in 2010); these examinations were performed also on the basis of compliance control and control of financial reporting. In 2009 the Accounting Committee performed two compliance control measures (examinations) (12 examinations in 2010) as regards observance of the Public Financial Control Standards.

The main object of regulation of the Lima Declaration and other international standards in this area is **independence of supreme public audit institutions**. The independence requirements should be envisaged in the national legislation. International standards indicate that the supreme control bodies can perform the assigned tasks objectively and effectively only when they are independent from the controlled organizations and protected from outside influence. The constitution should specify the supreme auditing body and the necessary level of its independence, more details can be specified in the respective law. Independence of the supreme auditing body is inseparably connected with independence of its members and financial independence – the supreme auditing body shall be provided with funds sufficient for performance of its tasks; it should have the right to apply with a request directly to the state authority, which takes decisions on the national budget, in order to obtain necessary financing; it should have the right to use within its competence the funds allocated for it in a separate budget line. Provisions on relations between the supreme audit authority and the Parliament should be specified in the national constitution in accordance with the terms and conditions of that country.

In 2000 the Accounting Committee of the Republic of Kazakhstan was admitted as a member of INTOSAI (International Organization of Supreme Audit Institutions). Representatives of the Accounting Committee of Kazakhstan claim that its activities are planned and justified in accordance with the standards of INTOSAI, EUROSAI and other international standards and recommendations; that the Accounting Committee adheres to the guiding principles of the Lima Declaration on functional and organizational independence and that the only thing which is missing is compliance with the financial independence principle. It was noted that the Accounting Committee is independent in selection of audited objects when planning control measures. The plan of work can be changed only in case of receipt of instructions from the President of Kazakhstan and inquiries of members of the Parliament.

There is still no separate law on the Accounting Committee, although it is noted that the Accounting Committee is working on its draft. The Constitution of the Republic of Kazakhstan only provides that the President appoints the Chairperson and two members of the Accounting Committee for the term of five years. Each chamber of the Parliament appoints three members of the Accounting Committee independently without participation of the other chamber. While this procedure for appointing members of the Accounting Committee provides some guarantees from undue influence on its activities, it is not sufficient to ensure its independence. In particular, the following provisions of the

Regulations on the Accounting Committee appear problematic: the Chairman of the Accounting Committee gives instructions to its members concerning carrying out of the audits; decisions of the Accounting Committee are taken by the majority of votes of the members of the Committee who are present at the meeting, but no quorum for validity of meetings is established.

An excessive control over the Accounting Committee's activities on the part of the President also gives rise to concern, as such control may not comply with the above-mentioned international standards on independence. Although in the majority of countries the supreme audit institutions are subordinated to parliaments, the very fact of subordination of the independence Committee in Kazakhstan to the President would not have raised concern, if independence of the Committee and its members were fully guaranteed. Instead of this: the Regulations on the Accounting Committee are approved by the President of Kazakhstan (and accordingly can be changed by him any moment); the Regulations put an emphasis not on the Accounting Committee's independence but rather on the direct subordination and accountability of the Accounting Committee to the President, execution of instructions of the President on issues related to performance of the republican budget, personal responsibility of the Accounting Committee's Chairperson for performance of the entrusted tasks and duties; the Accounting Committee carries out its activities according to a strategic plan approved by the President of Kazakhstan; availability of a broad range of grounds for early termination of the Accounting Committee's members ("violation of oath, laws of the Republic of Kazakhstan, acts of the President of the Republic of Kazakhstan and these Regulations, commission of a degrading act dissonant with their status, non-observance of official duties"); not only the President of Kazakhstan, but also authorized persons from the Presidential Administration can give instructions to the Accounting Committee.

Representatives of the Kazakh authorities noted in their written comments, that the Accounting Committee is an independent administrator of budget programmes, it spends budget funds allocated for its needs on its own, in accordance with the budget classification and without any approval from other parties. However, the budgetary request, which includes the calculation of the Committee's expenditure needs for the next year, has to be prepared with all necessary justifications and submitted to the authorized body responsible for budget planning, *i.e.* to the executive branch of power. After its positive conclusion, the proposal of the future expenses prepared by the Committee is used in the development of the draft Law on budget for the next financial year, which has to be reviewed and approved by the Parliament. In order to comply with requirements of the Lima declaration, the Accounting Committee explored the issue of preparing amendments in the budgetary legislation in order to exclude possibility of the executive branch to correct budgetary request of the Accounting Committee, when only the Parliament would have this exclusive right. This initiative will be submitted to the President for decision. This initiative, in experts' opinion, should be supported.

The Accounting Committee points out that combating corruption in the budgetary area, tax and customs administration systems is considered as a priority of its activities. Nevertheless, the legislation does not specify procedures for detection, evaluation and response to corruption risks. The basic provisions for evaluation of efficiency of tax and customs administration are envisaged in the Budgetary Code and the Rules for Conducting External Public Financial Control, approved by the Resolution of the Accounting Committee of 27 March 2009 No. 4. The Accounting Committee developed methodological guidelines allowing to exercise more efficient and targeted control of relevant type.

The annual report approved by the Accounting Committee is submitted to the Parliament for consideration and approval and to the Government for information before 15 May of the current year. The Chairperson of the Accounting Committee presents annual report in the Parliament. Upon approval by the Parliament the annual report is published in the mass media with due account of the

classified information regime. The Chairperson of the Accounting Committee not less than every quarter submits to the President of Kazakhstan a report on the Accounting Committee's activity. The annual report contains opinion on the Government's report concerning execution of the republican budget and also indicates the key activity indicators of the Accounting Committee during the reporting year, the structure of the identified financial violations, as well as quantitative data on implementation of resolutions and representations during the reporting period and information on their implementation.

For the purposes of exercising control the Accounting Committee and the public financial control bodies exchange information on plans and conducted control measures, carry out joint activities upon prior agreement and also exercise control together with other state bodies. In case of detection of elements of a crime or an administrative offence in actions of officials, the control materials are submitted to the law enforcement bodies or bodies authorized to consider cases on administrative offences. According to the joint order of the Chairperson of the Accounting Committee and the Chairperson of the Agency for Combating Economic and Corruption Crimes (Financial Police) there was established the interaction procedure of the Financial Police.

The Budgetary Code regulates issues of control over efficient, useful and purposeful use of the budgetary funds. The control tasks appear to be too broad to ensure efficiency. The procedure and criteria for selection of control objects are not clear, but they are necessary for focusing the control activities on the particular moments and ensuring efficient use of the available resources. No information was presented with respect to the annual report on activities. In the written comments it was noted that the Accounting Committee introduced the risk management system, which allows to keep track on permanent basis of the state authorities and entities of the quasi-state sector on several levels of risks and to ensure inclusion of those which are most exposed to corruption into the list of objects subject to control during the respective reporting period. In order to exclude the subjective approach to the selection of control objects and identification of the scope of control, the above system is automated and permanently improved. The Accounting Committee developed the respective sample risk management system for the newly established audit commissions of the regions and cities of Astana and Almaty. These developments are welcome.

There is a some confusion between the powers and functions of the internal and external control (for which the Financial Control Committee of the Ministry of Finance and internal control units are responsible). Due to the absence of clear and explicit division of competences, powers and functions partially overlap and are duplicated. The Budgetary Code gives too broad a definition of powers of the public financial control bodies. It is necessary to prepare and adopt a separate law on the Accounting Committee in order to regulate principles of its activity and ensure necessary level of independence in accordance with the Lima Declaration and other international standards. It is also necessary to specify the main reform directions in the area of public financial control in order to clearly divide the key functions, such as internal and external audit, internal control, financial inspections; as well as to ensure clear and strict separation and determination of powers and functions of internal and external audit, so that the supreme public audit system could operate effectively.

In accordance with the instruction of the Presidential Administration the Accounting Committee prepared a draft Concept for Development of the Public Financial Control till 2020 (its adoption was postponed to 2012). Within the framework of the above Concept there is envisaged a gradual transition of Kazakhstan from the state control to audit with clear differentiation of competence between the respective bodies of internal and external audit. The measures for implementation of the Concept include development of separate laws on internal and external audit. During the transition period the activities of the Accounting Committee will be re-focused from the control of financial reporting and compliance control to evaluation of implementation of the state programmes

and strategic plans, as well as analysis of influence of the state authorities and entities of the quasi-state sector on development of certain branches of economy or economy on the whole.

Taking into account that the previous recommendation envisaged reviewing and considering the possibility of changing the status of the Accounting Committee, which was accomplished (“reviewed” and “considered”), the group of monitoring experts agrees with the update of this Kazakhstan’s rating to **fully** compliant. This, however, does not eliminate the problem of lack of independence of the Accounting Committee, which was highlighted above and reflected in the new recommendations.

New Recommendation 3.4.

- **To specify the main directions of reforms in the area of the public financial control in order to clearly separate the key functions: external audit, internal audit, internal control, financial inspections.**
- **To adopt and ensure enforcement of the legislative provisions on public internal audit and internal control in compliance with international standards and best practice. To approve and implement in practice general standards of internal audit and relevant guidelines and codes of conduct for internal auditors in accordance with international standards of internal audit. To establish internal audit units in the executive authorities and the Central Unit of Harmonization of Methodology of Internal Audit in the Ministry of Finance.**
- **To prepare and adopt a separate law on the Accounting Committee in order to regulate principles of its activity and to ensure the necessary level of functional and institutional independence of the Accounting Committee in line with the Lima Declaration and other international standards; to strengthen legislative guarantees of the financial independence of the Accounting Committee.**
- **To introduce a practice of detection and response to corruption risks, especially in state authorities which face a high level of corruption risk.**

3.5. Public Procurement

Previous Recommendation 29

Ensure that all information about public procurement, except for state secret information, is open to the public, in order to reduce opportunities for violations in this field. Consider carefully both components of the public procurement that might be subject of the controls and audits when searching for corruptive acts, i.e. the contract and the procedure. Ensure that legal and institutional framework provides for strict examination of the contract files, controlling of entire procurement process as well as reviewing reliability and effectiveness of internal control system.

In September 2007 Kazakhstan was **partially** compliant with this recommendation.

Public procurement is one of the key areas of anti-corruption policy.

Important improvements of the Kazakh legislation on public procurement were changes adopted in November 2008 and July 2010 which aimed at increasing transparency of the procurement procedures and minimising corruption offences, especially in part of functioning of the uniform web-portal and organization of the electronic procurement system.

The uniform electronic procurement system “E-Commerce Centre” is a single access point to electronic services in the public procurement and allows persons to participate in procurement

procedures in the capacity of clients, organizers and buyers from any computer connected to the Internet. The homepage of the Centre contains various information (list and texts of legal acts, description of procedures, frequently asked questions, etc.).

The public procurement system is based on decentralization, openness and transparency. In particular, an open tender is defined as a standard procurement method; web-based resources are widely used as means of communications and rationalization of processes; divisions responsible for public procurement in the Ministry of Finance are well organized and vested with regulatory, monitoring and supervisory functions.

High competition for public contracts allows to get higher quality for the buyers' money, which is the main objective of public procurement regulations, is as such an effective anti-corruption guarantee. Correct application of detailed public procurement rules by the procuring organisations, support and guidelines by the authorized bodies to employees responsible for procurement, as well as a developed system of legal remedies for violated rights facilitate proper ethical behaviour in the course of public procurement.

The main principles of public procurement, which are defined in Article 3 of the Public Procurement Law, do not refer to the direct duty of the procuring organisations and other persons to observe these principles. There is no definition and no sufficient clarification on how these principles should be implemented. Main principles should be observed during any type of the procurement procedures, even simplified and with insignificant price.

The Law provides for the 'equal opportunities' principle for the potential suppliers, who participate in the procurement procedures and execution of contracts. According to international standards the procuring organisation should treat all parties equally and not discriminate any of them; setting restrictions and criteria for all persons shall comply with the principles of proportionality, adequacy and justification of the particular goal of public procurement. The Law provides that it is based on the principle of fair competition among potential suppliers. This is a too narrow definition which has to be broadened. According to international standards the procuring organisation should ensure effective competition and should not distort it with the use of budgetary funds, as well as to avoid conflicts of interests distorting competition.

The Public Procurement Law gives substantial preferences for Kazakh suppliers, thus expressly reducing the volume of foreign investment into the country. It does not facilitate open and transparent trade and co-operation in the field of procurement of goods, works and services. The legislation of Kazakhstan thus provides a certain barrier for outside competition in order to support local enterprises, who obtain privileges related to prices, payment terms and other preferences. The substantial restriction of competition, including one related to potential foreign suppliers, facilitates corruption and inefficient procurement because the range of suppliers available for selection is decreased and the level of transparency of the procurement which is closed to outside world becomes lower.

Article 4 of the Law contains 58 various exemptions from the scope of its regulation, some of which are unjustified and do not comply with international standards and best practice. Among them: purchase of goods, works, services, if the total annual amount envisaged in the annual public procurement plan does not exceed 2,000 monthly calculation rates; purchase of goods being raw material resources for strategically important productions which are not extracted in the territory of the Republic of Kazakhstan and are purchased from abroad; purchase of goods and services connected with representation expenses; purchase of print periodicals, services for provision of information placed on web-sites; purchase of services of rating agencies, financial services; purchase of goods for subsequent transfer into leasing in the course of conducting leasing activities; purchase

of services envisaged by the legislation of the Republic of Kazakhstan on elections; purchase of pharmaceuticals and medical purpose products; purchase of services connected with business travel expenses; purchase of consulting and legal services on protection and representation of interests of the State or customers in international commercial arbitration courts and foreign judicial bodies; purchase of goods, works and services from persons identified by laws of the Republic of Kazakhstan; purchase by the specialized organization (agent) of agricultural products and their conversion products; purchase of services for processing statistical observations; purchase of goods, works and services produced, performed, rendered by state enterprises of correctional facilities; purchase of goods into the state material reserve; purchase of petroleum, oil and lubricants from the national producers into the state material reserve; purchase of goods, works and services at the expense of funds allocated from the reserve of the Government of Kazakhstan for emergency needs in case of situations threatening political, economic and social stability of the Republic of Kazakhstan or its administrative and territorial unit.

It should be stressed that any unjustified exemption, which prevents free access to public procurement procedures for interested national or foreign potential suppliers, limits fair competition and transparency of procurement procedures and concluded contracts, unreasonably increases purchase prices and facilitates corruption.

Article 1 of the Law in the definition of procuring organisations excludes national management holdings, national holdings, national management companies, national companies and legal entities affiliated with them. Accordingly these entities are not obliged to follow the principles and procedures on the basis of openness and transparency and to publish notifications on tenders in the uniform electronic procurement system “E-Commerce Centre”. As it was noted during the on-site visit, these organizations determine procurement rules on their own. Exclusion of such entities, which operate with substantial funds and state assets⁵⁷, from the scope of regulation of the Law is a serious drawback and may lead to corruption.

In their written comments the Kazakh authorities indicate that the Committee for Financial Control of the Ministry of Finance will initiate reduction of the number of areas, which are not covered by the Public Procurement Law, and extension of the Law to cover national management holdings, national holdings, national management companies, national companies and affiliated entities. This initiative should be welcomed.

Observance of the public procurement legislation in Kazakhstan is ensured through:

- control exercised by the Financial Control Committee of the Ministry of Finance and its regional divisions;
- the Department on Methodology of Public Procurement of the Ministry of Finance which cooperates with the Financial Control Committee on issues of collection, summarising and analysis of data on public procurement;
- the right of potential suppliers, envisaged by Article 45 of the Law, to file complaints in case of violation of their rights and lawful interests (there are two exemptions from this right to file complaints).

To ensure implementation of the Law the Financial Control Committee of the Ministry of Finance may issue obligatory demands to the procuring organisations, which violated the Law. The controlling bodies may file lawsuits to challenge contracts in case of violation of the Public

⁵⁷ For example, national management holding “Samruk Kazyna” is the biggest purchasing organization in Kazakhstan. The volume of its procurement in 2010 was approximately 2 trln. tenge (approx. USD 13.5 bln.). Source: <http://www.state.gov/e/eeb/rls/othr/ics/2011/157302.htm>.

Procurement Law. The effective system for consideration of complaints in the Financial Control Committee of the Ministry of Finance is the key to the proper functioning of the whole public procurement system, since it encourages the procurement officers to observe the rules and also establishes trust among economic agents with respect to transparency, objectivity and proper performance of the procedures. Since there is no information on the number of complaints and their contents, it is not possible to analyze practical effectiveness of the appeal procedures.

The Financial Control Committee of the Ministry of Finance carried out 871 inspections in 2009 and 949 inspections in 2010 on the basis of the filed complaints. In 2009 the Financial Control Committee of the Ministry of Finance brought 269 persons to administrative liability for violation of the public procurement legislation and 401 persons in 2010. There is no information on the imposed sanctions.

For the broader dissemination of information on practical implementation of the Public Procurement Law it is necessary to disclose the summarised information about filed complaints, actions that are appealed, as well as on the results of the performed inspections. There is no official statistics on the number of persons brought to administrative and criminal liability for violation of the public procurement legislation. Also there is no detailed and structured information on the contents of complaints, which does not allow to analyze weaknesses of the legislation and possible corruption practices.

Kazakhstan is **largely** compliant with this recommendation.

New Recommendation 3.5

- **To continue reforming the public procurement legislation, in particular, by substantially decreasing the number of areas exempt from the scope of regulation of the Public Procurement Law, by stipulating a competitive public procurement procedure - based on the law and in line with international standards - for national management holdings, national holdings, national management companies, national companies and legal entities affiliated with them.**
- **To establish a system of statistical recording and analysis of data on the performed procurement, complaints and results of their consideration, frequent violations and sanctions, etc. These materials should be updated and made public on a regular basis.**

3.6. Access to information

Previous Recommendation 27

Introduce in the rules and procedures a common procedure for the natural and legal persons which would allow receiving information from the state and local authorities; provide for a possibility to appeal the refusal to provide such information to these bodies without sufficient grounds.

In September 2007 Kazakhstan was **partially** compliant with this recommendation.

In January 2007 Kazakhstan adopted the Law “On the Procedure for Consideration of Petitions of Individuals and Legal Entities”, which replaced the similar Presidential Decree of 1995 that had the force of law. One of the petitions regulated by this Law is an inquiry – “a request of a person to provide information of personal or public nature that is of interest to him”. The subjects considering such petitions are the state authorities, local self-government bodies, 100% state-owned legal entities or legal entities providing goods (works, services) in accordance with the public order and/or public procurement, “which are entitled to consider and take decisions on petitions of individuals and legal entities in accordance with their competence”. At the same time petitions of citizens are

also regulated by the Law “On Administrative Procedures”, which leads to duplication and, in certain cases, to explicit differences between these two laws. The issues of accessing “informational electronic resources”, including state resources, are regulated separately by the Law of the Republic of Kazakhstan “On Informatisation”.

According to the Law “On Mass Media” (Article 18) in case of inquiry for information from a mass media outlet “the state authorities and other organizations” are obliged to provide information not later than within three days following the date of receipt of the inquiry or to provide a response indicating the term of provision of the requested information or grounds for refusal. A response to an inquiry, which needs additional analysis and examination, shall be given not later than within a month following the date of receipt of the inquiry. When the general procedure for accessing information is inefficient, the special procedures on provision of information to mass media can be useful, although such approach in general contradicts to the principle of equal rights. Access to information shall be secured not by granting privileges to mass media, but by guaranteeing to any individual and legal entity maximum possible and quickest possible access to information.

The Law of the Republic of Kazakhstan “On the Procedure for Consideration of Petitions of Individuals and Legal Entities” does not envisage a special regime for filing and processing information inquiries which would differ from other types of petitions. Therefore, the Law mixes different human rights – the right to access information and the right to participate in the management of state affairs by filing petitions and the right to file petitions for enforcement or protection of one’s rights.⁵⁸

Different nature of these important rights requires setting different terms for processing of the respective applications – information inquiry concerns already existing information that is in possession of the state authority (accordingly, its search and delivery requires much less time), while “proposals, applications, complaints, comments” require performance of certain actions on the part of the state authority (drafting clarifications, amending legal acts, bringing persons to liability, etc.). According to the Law the inquiries shall be considered within 15 calendar days. If for consideration of application it is needed to obtain information from other subjects, officials or to conduct on-site examination, then the term is increased to 30 calendar days. Besides, in cases when it is necessary to perform additional analysis or examination, the term can be extended for not more than 30 additional calendar days; the applicant should be informed accordingly within three calendar days from the moment of extension of the term. These terms for consideration of information inquiries are excessive and cannot ensure efficient implementation of the access to information right.

The positive thing is the possibility to send information inquiries to the 100% state-owned legal entities or legal entities providing goods (works, services) in accordance with the public order and/or public procurement. However, the scope of the Law should also apply to natural monopolies and legal entities holding dominant position on the market with respect to information on the provided services (works, goods). It is also necessary to explicitly provide that the Law does not apply to inquiries sent by one state authority to another one.

Another positive provision is the possibility to file petitions orally and in electronic form. However, it is necessary to delete from the definition an inquiry that the inquiry concerns information “personal or public nature that is of interest to the inquirer”, as in practice this may lead to the requirement of

⁵⁸ According to the data provided, in 2009 there were received 19,942,875 petitions from individuals (including 144,916 complaints) and 20,235,779 petitions (including 132,826 complaints) in 2010, from which there were 257,760 refusals to satisfy in 2009 and 178,998 refusals in 2010.

justification of existence of such “personal or public nature” interests, which does not comply with international standards. A person requesting information should not be obliged to indicate or explain the reasons for filing the inquiry.

Article 12 of the Law “On the Procedure for Consideration of Petitions of Individuals and Legal Entities” envisages a procedure of prior administrative complaint (with a superior authority or official), which has to be used before filing a lawsuit with a court. The Law does not specify the maximum term for consideration of such complaint, nor does it provide for any other guarantees of efficiency of such administrative appeal. The Law does not envisage extrajudicial appeal to an independent body (for example, special authorized body for protection of the right to information). Besides, the provisions of Article 12 of the Law “On the Procedure for Consideration of Petitions of Individuals and Legal Entities” directly contradict to Article 17 of the Law “On Administrative Procedures”, according to which a decision taken with respect to an application can be appealed by an applicant to the superior state authority (official) or in a court. It is necessary to eliminate this and other inconsistencies between various laws regulating issues of access to information.

The main flaw of the Law “On the Procedure for Consideration of Petitions of Individuals and Legal Entities” is absence of regulation of the procedure for limiting access to information in accordance with international standards (restriction of access is possible only in case of passing a so called three-part (harm) test – see below; availability of a list of information that cannot be classified as restricted information).

Liability for refusal to provide information to an individual and illegal limitation of the access to information right is established by Article 84 of the Code of Administrative Offences. Liability is envisaged only for refusal to provide information to an individual and does not apply to legal entities; liability is established for “illegal refusal to provide duly collected documents and materials directly affecting rights and liberties of individuals” which limits the sphere of liability (“duly collected documents”, “directly affecting rights and liberties of individuals”). Such provisions do not ensure effective liability for violation of the right to information. There is no liability for violation of terms for provision of information, incomplete responses, failure to respond to the inquiry, etc. The fines for violation of this article are too low (5-10 monthly calculation rates, *i.e.* up to approximately USD 100).

The Law on the Fight against Corruption (Article 12) envisages liability for “unjustified refusal to provide information to individuals and legal entities, provision of which is stipulated by legislation, its delay, provision of unauthentic or incomplete information”. Such violation is considered to be one of the “offences facilitating corruption”, which results in demotion or imposition of a disciplinary sanction in the form of a warning notice on partial service compliance. In case of repeated commission of this offence within a year after imposition of disciplinary sanction the person is to be dismissed.

The respective offences envisaged in the Law on the Fight against Corruption and the Code of Administrative Offences should be aligned one with another and also it is necessary to explicitly stipulate whether disciplinary sanctions are applied in parallel to imposition of administrative sanctions.

The drawbacks of the effective legislation on access to information are also reflected in the practice of its implementation. According to the study performed in 2008 by civil society organizations of Kazakhstan⁵⁹, out of 72 inquiries sent to the central state authorities by various entities (non-

⁵⁹ The social funds “MEDIALIFE” and “Decenta” supported by the Fund Soros-Kazakhstan. Source: <http://www.medialife.kz/html/library/main.htm>.

governmental organizations, journalists, retired persons) responses were received in 62% of cases, from which 85% were complete responses; out of 1,038 inquiries sent to the local state authorities 46% of responses were received, from which 62% were complete ones. In the majority of cases no answers were received at all (the share of refusals in provision of information was only 7%).

It is important to note that there are no detailed provisions in the legislation on obligatory pro-active (not in response to an inquiry) publication of the publicly important information by the state authorities. The Rules of Provision and Publication of Official Information by the Central State Authorities of the Republic of Kazakhstan (as approved by the Government of Kazakhstan) contain general provisions on the procedure for dissemination of official announcements. As an example of proper regulation of the said issues one can refer to the draft Law on Access to Public Information, which contains a detailed list of information subject to mandatory publication, including on the official Internet sites. Although it should be acknowledged that on the whole in practice the state authorities became more open, in particular, with the help of information technologies (for example, heads of all state authorities must maintain their blogs on the official web-sites; elements of electronic government are actively introduced).

In connection with the above, the monitoring group welcomes drafting of the special **Law on Access to Public Information**, which was developed jointly by non-governmental organizations, donor organizations, representatives of the state authorities and which, in general, is quite progressive. Adoption of this law is envisaged, in particular, in the National Action Plan in the Sphere of Human Rights of the Republic of Kazakhstan for 2009-2012. However, in June 2011 consideration of that draft law was again postponed – until 2012.⁶⁰ It is recommended to accelerate consideration and adoption of this draft law after obligatory adjustment of its text in line with international standards and recommendations. In particular, it is necessary to pay attention to the following significant deficiencies of the draft law (based on the analysis of the text as of 16 September 2010⁶¹):

- unclear definition of the term “public information”, which should cover all information in possession of public authorities and other entities;
- the principle of maximum disclosure is not clearly articulated – all public information is open, unless the law restricts access thereto;
- the law does not apply to information with restricted access, thus the sphere of its regulation is substantially narrowed. This particular Law should determine procedures for restriction of access to public information and should trump any other law regulating issues of status and access to information, but not the other way around, as it is envisaged in Article 3 of the draft Law;
- absence of a “three-component test” (harm test) – restriction of access to information is possible only in case of 1) restriction in interests protected by law, when 2) disclosure of information may cause significant harm to such lawful interest, and if 3) such harm outweighs public interest in information disclosure;
- the term “information with restricted access” is not defined clearly (“information, access to which is available only to a limited range of users or access to which is restricted for certain categories of information users”);
- complete prohibition for provision of intra-organizational information;

⁶⁰ Source: <http://www.zakon.kz/pravovye-novosti/223491-rassmotrenie-zakonoproekta-o-dostupe-k.html>.

⁶¹ Additional comments to the draft law and the text of the draft law are provided in the OSCE/ODIHR Opinion of 16 November 2010, <http://www.legislationline.org/ru/documents/id/16071>. See also analysis of the draft law prepared by organization “Article 19”, <http://www.article19.org/pdfs/analysis/kazakhstan-foi-memo.pdf>.

- possibility of refusal to provide information if it was published in mass media or placed on the Internet.

According to the international **Open Budget Index**⁶² in 2010 Kazakhstan was rated below average among 92 countries and was put into the group of countries with the minimum volume of available information on national budget and evaluation of the country's financial activities. This complicates possibilities of citizens to exercise control over the state in the sphere of budgetary funds management. Since 2008 the rank of Kazakhstan became slightly higher (it grew from 35 to 38 points out of 100). Ensuring budgetary openness, in particular, transparency of information on budget revenues in certain sectors (see below), is an important element of corruption prevention system and is required, *inter alia*, under provisions of the UN Convention against Corruption (Article 9). The principles of openness and obligatory disclosure of information shall also apply to the National Fund of Kazakhstan. Every month data on overall revenues and expenses of the Fund are published on the web-sites of the Ministry of Finance and the National Fund, however, detailed information is not disclosed, which does not allow to judge about the efficiency of spending of the funds and to exercise public control over formation and use of the Fund (as of early July 2011 it amounted to about USD 45 bln.).

Openness of information in the oil, gas and mining industries is also very important in the context of Kazakhstan. In 2005 the President of the Republic of Kazakhstan announced about Kazakhstan's support of the Extractive Industries Transparency Initiative (EITI) and since then a substantial progress was achieved in that direction. In September 2007 Kazakhstan obtained the status of a candidate state in the EITI and published its first report in January 2008. In December 2010 the EITI Board designated Kazakhstan as the country "Close to Compliant" and issued a number of recommendations, which Kazakhstan had to implement by June 2011.⁶³ Four national reports have already been published; the fifth report is under preparation. At the same time, according to the non-governmental organizations, only 133 companies out of 800 companies – users of subsoil resources take part in the Initiative; the reports do not reflect all significant payments of companies to the budget; data of the government and many companies are not verified by auditors; data in the reports are presented in an aggregated form and therefore do not allow to identify the reasons of inconsistencies between the data coming from companies and the government. It is necessary to eliminate these important deficiencies.

Preservation of **criminal liability for libel and insult** (Articles 129, 130 of the Criminal Code) has an utterly negative effect on freedom of speech in Kazakhstan and activity of mass media, which, in particular, carry out journalistic investigations and expose facts of corruption. Moreover, special protection is provided to the President of Kazakhstan, members of the Parliament and other representatives of power, whose insult or infringement of honour is criminalized under special articles of the Criminal Code (Articles 317-1, 318, 319, 320, 343⁶⁴) envisaging more severe sanctions. These provisions have on many occasions been criticized by the international community and non-governmental organizations. It is strongly recommended to repeal criminal liability for libel and insult

⁶² Source: <http://internationalbudget.org/files/OBI2010-Kazakhstan.pdf>.

⁶³ Source: <http://eiti.org/Kazakhstan>, <http://www.revenuewatch.org/our-work/countries/kazakhstan>.

⁶⁴ Article 317-1 "Public insult and other encroachment on honour and dignity of the First President of the Republic of Kazakhstan – Leader of the Nation, dishonouring of images of the First President of the Republic of Kazakhstan – Leader of the Nation, impeding legal activities of the First President of the Republic of Kazakhstan – Leader of the Nation", Article 318 "Encroachment on honour and dignity of the President of the Republic of Kazakhstan and impeding his activities", Article 319 "Encroachment on honour and dignity of the deputy and impeding his activities", Article 320 "Insult a representative of the power", Article 343 "Libel of a judge, member of jury, prosecutor, investigator, inquirer, expert, court bailiff".

as well as special crimes related to insult or infringement of honour of the President, members of the Parliament and other public officers. The respective relations should be regulated by civil law.

The statistics on the number of convicted (according to court verdicts that became effective) under Articles 129, 130 and 320 of the Criminal Code is shown below. According to the provided data, in 2008-2010 no one was brought to criminal liability (and convicted) under Articles 317-1, 318, 319 of the Criminal Code (CC).

Sanctions	Article 129 CC			Article 130 CC			Article 320 CC		
	2008	2009	2010	2008	2009	2010	2008	2009	2010
Fine	13	18	13	40	40	30	4	3	4
Conditional sentence	10	10	8	0	1	0		1	0
Public works	7	9	8	12	9	6	4	3	4
Restraint of liberty	4	1	5	1	0	0	1	3	9
Released from punishment	0	0	5	0	2	0	1	1	1
Corrective works up to 1 year	0	0	0	3	3	5	1	0	3
Measures of medical nature	1	0	0	0	0	0	0	0	0
Arrest	0	0	0	0	0	0		1	1
Imprisonment	6	3	0	0	0	0	1	0	0
Convicted, total:	41	41	39	56	55	41	12	12	22

The mere fact of existence of the criminal liability for libel, insult and other similar acts has a chilling effect on freedom of speech and activity of mass media, leads to self-censorship and hinders activity of investigative journalism to expose corruption. Moreover, enforcement in practice of sanctions connected with restraint of liberty or imprisonment further exacerbates this problem and is unacceptable in a democratic state. More severe sanctions for libel and insult of public officials also do not comply with international standards, according to which on the contrary such persons may be subject to much higher level of criticism. Such provisions are very important for the fight against corruption since they significantly suppress social activity aimed at detection and disclosure of information on illegal acts.

Reportedly there are also frequent cases of **lawsuits on compensation of moral damages** filed against journalists and mass media as well as court decisions awarding compensation of non-material damages in substantial monetary amounts.⁶⁵ This has extremely adverse effect on freedom of mass media in Kazakhstan and their ability to inform society about corruption, thus facilitating its prevention and exposure. According to the monitoring conducted by Foundation "Adil Soz" in 2009 the total amount of 156 lawsuits on compensation of moral damages exceeded 2.5 bln. tenge (over USD 17 mln.); such lawsuits were filed by 69 public officials, 47 legal entities and 35 individuals (in 2010: 85 lawsuits with the total amount of claims of 2,8 bln. tenge).⁶⁶ Only in January-July 2011 there were 38 lawsuits against mass media and journalists on protection of honour and dignity for the total

⁶⁵ For example, arrest of assets and banking accounts of the newspaper "Uralskaya Nedelya" in execution of the court decision to compensate damages under the lawsuit filed by a legal entity (the amount of damages was set at USD 136,000). On 8 July 2011 the cassation court upheld the local court's decision on recovery of more than USD 100,000 from the newspaper "Vzglyad" under the claim of a natural person (Source: <http://www.adilsoz.kz/news/kassacionnaya-instanciya-ostavila-v-sile-reshenie-razoryayushhee-gazetu-vzglyad/>).

⁶⁶ Source: <http://www.adilsoz.kz/programmems/issledovaniya/situaciya-so-svobodoj-slova-v-kazaxstane-v-2010-godu-analitcheskij-doklad/>.

amount of over USD 1.2 mln.⁶⁷ This results in insolvency and closure of independent publications. It is necessary to revise the respective legislation, in particular, to consider a possibility of setting court fees in proportion to the declared amount of claim in such cases, to introduce short statute of limitations periods for such lawsuits, to exempt from liability expression of value judgments and also to conduct awareness-raising in courts.

Kazakhstan is **partially** compliant with this recommendation.

New Recommendation 3.6.

- To ensure adoption as soon as possible of the Law on Access to Public Information, which would comply with international standards and recommendations. To revise provisions on liability for non-provision or incomplete (untimely) provision of information upon request of individuals and legal entities.
- To achieve compliance with standards of the Extractive Industries Transparency Initiative.
- To avoid that the liability for defamation is used to suppress the freedom of speech and reporting of corruption; to consider repealing criminal liability for libel and insult, as well as similar special crimes against public officials.
- To provide effective legislative mechanisms for preventing lawsuits that seek compensation of moral damages in excessive amounts (for example, by setting court fees in proportion to the declared amount of claims, to introduce short period of limitations for such lawsuits, to exempt from liability expression of value judgments), and to carry out relevant training for judges.

3.7. Political corruption

Previous Recommendation 34

Ensure maximum public accountability (including to the civil society) of the bodies, responsible for controlling the financing of political parties, candidates and elections campaigns, in order to avoid a possibility to discriminate selected parties and candidates and to ensure transparency in financing and expenditures of election funds. Devise and adopt an appropriate legal and institutional framework under which political parties and election funding will be subject of strict controls by an independent audit institution. Annual financial reports of political parties should be examined before publishing. A full audit of reports on election campaigns of all political parties who have the right to claim compensation of financial expenses should be performed before public funds are given from the state budget. The control body should be obliged to verify the accuracy of data on campaign finance provided in the reports, the legality of the way these funds were collected and used and accuracy of the amount claimed for reimbursement. Improve regulation of party financing from private sources; step up the control of party financing in order to prevent and combat the influence of individuals or separate public groups on the policy of the state and local government authorities. Ensure transparency of financing political parties – from the point of view of incomes and expenses, in order to ensure that each natural or legal body can receive information about donors and the amounts donated by them.

In September 2007 Kazakhstan was **partially** compliant with this recommendation.

⁶⁷ Source: <http://www.adilsoz.kz/news/ctatistika-narushenij-prav-smi-i-zhurnalistov-kazaxstana-yanvar-iyun-2011-goda/>

The regulations on financing of political parties and electoral campaigns should be reviewed in the general context of the country's political development and, in particular, its party system. In this regard one has to note domination of one political force in Kazakhstan, which leads to curbing of political competition and may as such facilitate corruption, since it excludes any mutual control and may result in mixing of state and party functions. Also it is necessary to pay attention to legislative provisions which do not facilitate establishment and functioning of different parties and competition among them (excessive requirements during creation of parties, vague provisions on registration and grounds for refusal, broad grounds for liquidation of a party, etc.).⁶⁸ In 2009 in pursuance of commitments arising from the membership of Kazakhstan in the OSCE, important changes were introduced in the Law on Political Parties and the Elections Law, but they eliminated only insignificant part of the mentioned problems.⁶⁹ Generally, one ought to agree with the official representative of Kazakhstan, who noted in May 2011 that "the political pluralism and multi-party system are considered in the modern world not only the main principles of democratic organization of the society, but also a source and obligatory condition of democracy".⁷⁰ Kazakhstan should continue reforming legislation on political parties in the direction of its further liberalization.

Financing of parties. According to the Law of the Republic of Kazakhstan "On Political Parties" (Article 18) the political parties' funds are formed from: 1) joining and membership fees; 2) donations from citizens and non-governmental organizations of the Republic of Kazakhstan provided according to the procedure specified by the Tax Committee, "on condition that such donations are documented and refer to their source"; 3) income from entrepreneurial activity; 4) budgetary funds. Political parties and its structural divisions are not allowed to receive donations from: 1) foreign states, foreign legal entities and international organizations; 2) foreigners and stateless persons; 3) legal entities with foreign participation; 4) state bodies and state organizations; 5) religious associations and charitable organizations; 6) anonymous donators; 7) individuals or non-governmental organizations of the Republic of Kazakhstan receiving grants and other funds from international or foreign non-governmental organizations.

The above provisions of the Law indicate a number of problems. Firstly, it is not explicitly defined that financing of parties cannot be provided by commercial organizations with the state participation (for example, national holdings, state enterprises, etc.); the term "state organizations" is not clearly defined in the law. Secondly, the mentioned procedure for providing donations is not determined and it is unclear why it should be defined by the tax authorities; this procedure should be envisaged directly in the law. Besides, a requirement to disclose the source of donation is not justified and, as such, unduly restricts private support of parties. Thirdly, there are no limitations on the maximum amount of donation from one person and per membership fee.⁷¹ Fourthly, the term "donation" is not

⁶⁸ See, for example, "Progress Report: Kazakhstan's OSCE commitments on democracy and rule of law in the light of the upcoming Kazakhstan's OSCE chairmanship", Legal Policy Research Centre. Source: http://www.lprc.kz/en/index.php?option=com_content&task=view&id=85.

⁶⁹ The following changes were introduced: the term for filing documents after the founding convention of the party was increased to four months; the quantitative qualification requirements related to the party's followers were decreased; an article regulating state financing was introduced; it was explicitly noted that certain violations of formal nature cannot be a ground for refusal in the party's registration, if the quantitative qualification requirements are observed; elections law was amended to exclude a possibility that only one party is eligible to form the Parliament.

⁷⁰ Source: <http://www.osce.org/odihr/77790>.

⁷¹ See, among others, sub-paragraph b.ii, Article 3 of the Council of Europe Committee of Ministers' Recommendation No. R (2003) 4 on common rules against corruption in the funding of political parties and electoral campaigns, April 2003, http://www.coe.int/t/dghl/monitoring/greco/documents/instruments_en.asp; GRECO reports of the third round of evaluation,

defined; it should include not only monetary funds but also non-material objects (services, works, discounts, etc.). Fifthly, the prohibition of donations from individuals or non-governmental organizations receiving grants and other funds from international or foreign non-governmental organizations is a non-democratic limitation of the right to participate in the state management by supporting political parties. The wording of the restriction itself (“from individuals..., receiving grants”) can be interpreted broadly as a prohibition for such individuals and organizations to support parties, if they have ever received the said grants and other funds, but not only in case of making donations at the expense of such grants/funds.

By the Law of 2 February 2009 the Law “On Political Parties” was supplemented with provisions on **direct state financing** of parties’ statutory activities from the republican budget. Such financing is allocated annually to parties represented in the Majilis (lower chamber) of the Parliament as a result of the latest elections of Majilis according to party lists – with 1% of the minimum salary rate for each received vote. The parties are not allowed to use budgetary funds for election campaigning. According to the Law the financing procedure is stipulated in the Rules for Financing of Political Parties approved by the resolution of the Central Election Commission of 3 September 2009 No. 166/314.

The state financing of parties’ statutory activities is an important tool for building a pluralistic democracy and restricting influence of private capital on political parties, which, *inter alia*, facilitates reducing risk of corruption influence on the country’s political system. Therefore, introduction of such institute in the legislation of Kazakhstan should be welcomed.

At the same time restricting such financing only to the parliamentary parties, *i.e.* parties which overcome a relatively high election threshold (7%)⁷², reduces the positive effect from such progressive measure. It is recommended before the next elections to the Majilis to adopt legislative changes and to extend the state financing also to those political parties, which received a substantial number of votes (for example, 1-3% and above; in any event this figure should be smaller than the established electoral threshold by several percentage points).⁷³ This is especially important, taking into account that according to the results of the previous elections in 2007 in the lower chamber of the parliament only one party (“*Nur Otan*”) was represented, as it received more than 88% of votes. Such measure will increase the potential of democratic development of the country, strengthen its party system and limit possibilities for corruption influence on the political system.

The only provision on the financial reporting of parties (not related to elections) is contained in paragraph 5 of Article 18 of the Law “On Political Parties”, according to which the annual financial reports of political parties are published in the republican printed publications. At the same time there are no provisions on the form and contents of such reports, level of their detail, deadlines for their publication and submission to the state control body, etc. There is also no regulation of the financial accounting in political parties or reference to the relevant legislation.

http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/ReportsRound3_en.asp; Guidelines for Financing of Political Parties, Venice Commission, 6 December 2000, [http://www.venice.coe.int/docs/2000/CDL-PP\(2000\)006-e.pdf](http://www.venice.coe.int/docs/2000/CDL-PP(2000)006-e.pdf); Recommendation of the Council of Europe's Parliamentary Assembly No. 1516 (2001) «Financing of political parties», <http://assembly.coe.int/Documents/AdoptedText/ta01/EREC1516.htm>.

⁷² For example, in the Council of Europe countries the highest threshold allowed from the standpoint of democratic development is considered to be the one not exceeding 3% (resolutions of the Parliamentary Assembly of the Council of Europe No. 1547 (2007) of 18 April 2007 and No. 1705 (2010) of 27 January 2010).

⁷³ See also GRECO reports of the third round of evaluation, http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/ReportsRound3_en.asp.

Control over financing of political parties is exercised only by the tax committee bodies in part of tax payments. According to the Regulations on the Central Election Commission, the Commission “determines procedure for financing of political parties”. Apparently, this means approval of the procedure for budgetary financing of parties introduced in 2009. Central Election Commission or any other body do not have any powers to perform monitoring and control over party financing, except for control over spending of the allocated budgetary funds which is exercised by the state financial control bodies according to the general procedure. Therefore, since the first round of monitoring there was no progress achieved in implementation of the respective recommendations.

Financing of elections. According to Article 28, paragraph 7, of the Constitutional Law “On Elections in the Republic of Kazakhstan”, candidates for the President, deputies of the Parliament and maslikhats have the right to use their election funds to cover expenses related to appearances in the mass media, conduct of public election events, publication of election campaign materials, as well as transportation and business travel expenses. It is forbidden to use for these purposes other funds from other sources, to accept any goods, works and services of individuals and legal entities, which were not paid from the election funds and used by the candidate in the course of election campaign, provision of any assistance to the said individuals and legal entities by the candidate for receipt of such services.

Election funds are subject to the state registration in accordance with the procedure established by legislation. The election funds are formed from the following sources: 1) personal funds of the candidates, funds of political parties; 2) funds allocated to the candidate by the public association of the Republic of Kazakhstan which nominated him/her; 3) voluntary donations from citizens and organisations of the Republic of Kazakhstan. Voluntary donations from state authorities and organizations, local self-government bodies, charitable organizations, religious organizations, Kazakh legal entities with foreign investment as well as anonymous donations from individuals and legal entities are prohibited.

Money are transferred to the election fund by wire transfers on the bank accounts identified by the Central Election Commission for expenditure on specific purpose – election campaigning. Central Election Commission is able to obtain operative information on cash movement on such bank accounts. Central Election Commission when receiving information on misuse of the funds has the right to apply to the authorized state bodies (Agency of the Financial Police, the General Prosecutor’s Office, the Accounting Committee and the Financial Control Committee of the Ministry of Finance) and ask to verify these facts.

The restriction for conducting election campaigning only at the expense of the registered election fund is an important tool for control over financing of election campaigns. However this tool loses its meaning, if there are no restrictions and control with respect to the proceeds of political parties which can be then transferred to the election fund without any limitations.

In accordance with the Constitutional Law on Elections, a candidate, a political party not later than within five days following establishment of the election results shall submit to the respective election commission a report on using money from their election fund (paragraph 9, Article 34). Information on the total amount of funds received by the election funds and their sources shall be published in the mass media within 10 days following the publication of the election results: in case of elections of the President, deputies of the Majilis by party lists – by the Central Election Commission; in case of elections of the deputies of the Senate of the Parliament – by regional election commissions; in case of elections of the deputies of maslikhats – by regional election commissions. The detailed information on the sources and amounts of revenues, on spending money of the funds is not published although it is submitted to the Central Election Commission according to the Rules of

Expenditure of the Election Fund and Submitting Reports on its Use During Elections of the President, Deputies of the Parliament, Maslikhats of the Republic of Kazakhstan (approved by the resolution of the Central Election Commission of 7 August 1999 No. 19/222). Therefore, no visible progress was achieved as regards the transparency of formation and expenditure of the election funds, exercising control by the Central Election Commission.

Violations of the established procedure for financing of parties and election campaigns are subject to administrative liability according to Article 108 (“Failure to submit or publish reports on expenditures for preparing and holding elections (republican referendum)”), Article 108-1 (“Financing of election campaign or provision of other material assistance outside of the election funds”) and Article 374 (“Violation of the legislation on public associations”) of the Code of Administrative Offences. Administrative cases on these articles are reviewed by judges of the specialized regional administrative courts and their equivalents (Article 541 of the Code of Administrative Offences). According to replies to the questionnaire of the second round of monitoring, in 2010 no one was held liable under these articles. Also Article 337 of the Criminal Code envisages a criminal liability for establishment or management of a political party, which is “financed from the sources prohibited by the laws of the Republic of Kazakhstan”, as well as for “active participation” in such party’s activity. According to information provided by the General Prosecutor’s Office, in 2008-2010 no one was held liable under Articles 108 and 108-1 of the Code of Administrative Offences and Article 337 of the Criminal Code.

Besides, according to Article 34 of the Constitutional Law “On Elections in the Republic of Kazakhstan”, which regulates issues of the non-state financing of elections, violation by a candidate, political party, which nominated a party list, of the rules envisaged by paragraphs 1-8 of that Article, as well as of the procedure for expenditures from the election funds approved by the Central Election Commission results in invalidation of the decision on registration of the candidate, party list, and should this happen after the elections but before registration of the candidate as the President, deputy of the Parliament, deputy of maslikhats, member of another local self-government body – declaration of the elections in the relevant territory or district invalid. According to information by the Central Election Commission, in 2008-2010 there were no violations of Article 34 of the Elections Law. This provision as well as similar provisions in Articles 59, 73, 89, 104 and 118 relating to correctness of data on income and assets as the grounds for revocation of the registration, were criticized by the OSCE/ODIHR already in 2004⁷⁴ and were not fixed until now. The sanction in the form of revocation of the registration for any violation of the procedure for financing of elections and spending election funds, regardless of how grave the offence was, is disproportionate and should be replaced with financial penalties.

Integrity of political public servants. Issues of incompatibilities, financial control, conflict of interests of political civil servants are regulated by the Law on the Civil Service. As noted above, political civil servants include a very broad range of persons (see the respective section of the report).

Deputies of the Parliament and of maslikhats are not classified as political civil servants under the Law on the Civil Service⁷⁵ and they are covered by the Law on the Fight against Corruption. However there are no provisions on conflict of interests in the Law on the Fight against Corruption. Although the Law on the Fight against Corruption obliges deputies to declare their income and assets to the tax authorities, the financial control system is not effective, as was noted before. The Law sets restrictions regarding incompatibility of activities of a deputy with any other paid activity and also

⁷⁴ Source: <http://www.legislationline.org/documents/id/1990>.

⁷⁵ In accordance with Article 7 of the Law “On the Civil Service” and the Register of Political Civil Servants Positions approved by the President’s Decree No. 317 of 22 December 1999.

specifies the procedure for transferring assets into trust management for the period of performance of deputy's functions. According to Article 52 of the Constitution of the Republic of Kazakhstan and the Law "On the Parliament of the Republic of Kazakhstan and Status of its Deputies" (Article 24), a deputy of the Parliament does not have a right to be a deputy of any other representative body, occupy any other paid positions, except for teaching, scientific or any other creative activities, to carry out entrepreneurial activity, to be a member of a management body or supervisory council of a commercial organization. Violation of this rule results in termination of the deputy's powers upon submission of the Central Election Commission.

Deputies of the Parliament and of maslikhats as persons authorized to perform state functions are subjects of liability under two categories of offences envisaged by the Law on the Fight against Corruption: offences facilitating corruption (Article 12) and corruption offences connected with illegal receipt of benefits and advantages (Article 13). The same provisions apply to persons who are equated to persons authorized to perform state functions, including candidates for the President, deputies of the Parliament and of maslikhats, candidates for members of the elected local self-government bodies. In case a deputy of the Parliament and candidates for the said positions (but not a deputy of a maslikhat) commits one of the mentioned offences, anti-corruption bodies notify the respective election commission (the Central Election Commission for deputies of the Parliament) thereof, which should then inform the Parliament accordingly within five days. The Laws "On the Parliament of the Republic of Kazakhstan and Status of its Deputies" and "On the Local State Management and Self-Governance" do not envisage such a ground for termination of the powers of deputies of the Parliament and of maslikhats as violation of the Law on the Fight against Corruption. With respect to many offences mentioned in Articles 12 and 13 of the Law on the Fight against Corruption liability is envisaged neither in the Criminal Code nor in the Code of Administrative Offences, as a result there are no legal grounds for bringing deputies of the Parliament and of maslikhats to liability for commission of these offences (unless it is a criminal offence).

There are no codes of ethics for deputies of the Parliament and maslikhats, while the Code of Ethics for Civil Servants does not apply to them. The Parliament's Rules of Procedure, adopted at the joint session of both chambers of the Parliament, contains a separate Chapter "Rules of Ethics of Deputies", but it does not mention issues of conflict of interests, their disclosure, prevention of corruption, etc. Also there are no parliamentary bodies in charge of these issues. This is not in compliance with Article 8 of the UN Convention against Corruption ("Codes of conduct for public officials"), which applies to the members of legislative assemblies as well.

It should be noted that a major role in the issues of ethics and liability of deputies is played by the Central Election Commission. According to Article 52 of the Constitution, preparation of issues concerning imposition of penalties on the deputies, their observance of the incompatibility requirements, principles of the deputies' ethics, as well as termination of the deputies' powers and deprivation of their powers and lifting of their immunity, is vested with the Central Election Commission. Besides, according to the Regulations on the Central Election Commission, its members exercise control over attendance by deputies of sessions of the Parliament and its bodies, as well as control over inadmissibility of transfer by a deputy of his vote. Such powers of the Central Election Commission are rather unusual and can be viewed as limitation of independence of the parliamentary members. Furthermore after the constitutional reform of 2007 the procedure for forming composition of the Commission was changed, its members are now appointed by the President, Majilis and Senate (two members each), while the Chairperson of the Commission is additionally appointed by the President. Previously all members of the Central Election Commission were elected by the Majilis. Powers of the Central Election Commission are specified in the President's Decree, but not in the law. Members of the Central Election Commission are political civil servants. Such status and procedure for forming the Commission do not meet the independence

requirements, which apply to bodies responsible for elections, control over financing of political parties and, moreover, exercising certain control over members of the legislative body.⁷⁶

In their written comments the Kazakh authorities refer to various examples of foreign countries concerning the establishment and status of elections commissions, in particular that in many European countries the executive power bodies are responsible for administration of elections. In this respect, the practice of “old” democracies is not exemplary. In this context, the Code of Good Practice (paragraph 3.1.b., Section II), adopted by the Venice Commission, states clearly: *“Where there is no longstanding tradition of administrative authorities’ independence from those holding political power, independent, impartial electoral commissions must be set up at all levels, from the national level to polling station level.”* The Code further states that a Central Election Commission *“should include: i. at least one member of the judiciary; ii. representatives of parties already in parliament or having scored at least a given percentage of the vote; these persons must be qualified in electoral matters”* (paragraph 3.1.b., Section II).⁷⁷

Regulation of lobbying. By the Government’s Resolution of 30 December 2009 a draft law “On Lobbying” was introduced to the Majilis. The draft law limits lobbyist activity to the Parliament (prohibiting lobbying in the executive authorities) and limits the lobbying subjects to registered associations of legal entities (unions, associations uniting not less than ten legal entities), thus not allowing lobbying by professional lobbyist companies and by legal entities themselves. Also the draft law defines legislative areas where lobbying is prohibited (for example, in the spheres of law enforcement activities and military service, judicial system and proceedings, administrative and territorial division of the Republic of Kazakhstan, budgetary and inter-budgetary relations, international relations, enforcement of tax duties of individuals and legal entities, ecological safety). The draft law does not contain sufficient provisions on transparency of lobbyist activities, which is one of the main goals of legislative regulation in this area (the draft law does not stipulate publication of the register of lobbyists, filing and public disclosure of information on expenses of lobbyists, declaration of the funds spent by the client on lobbyist activities). According to one of the classifications of lobbying regulations, the said draft law can be classified as a weakly regulated system.⁷⁸ One should also agree with the opinion that regulation of lobbying makes sense when there exists a strong parliament, in which various political interests are represented.⁷⁹

Kazakhstan is **partially** compliant with the previous recommendation.

New Recommendation 3.7

- **To revise legislation on political parties’ financing by limiting the maximum size of private donations and membership fees, removing unjustified limitations on such donations, defining the term “donations” which should include non-material benefits, and by clearly prohibiting financing of parties by companies with state participation.**

⁷⁶ Code of Good Practice in Electoral Matters (Section 3.1.), Venice Commission, Council of Europe, October 2002, [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)023rev-rus.pdf](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023rev-rus.pdf); Recommendation of the Cabinet of Ministers of the Council of Europe Rec(2003)4 on common rules against corruption in the funding of political parties and electoral campaigns (Article 14), April 2003, http://www.coe.int/t/dghl/monitoring/greco/documents/instruments_en.asp.

⁷⁷ See above footnote.

⁷⁸ Report on the legal framework for the regulation of lobbying in the Council of Europe Member States, Venice Commission, May 2011. Source: [http://www.venice.coe.int/docs/2011/CDL-DEM\(2011\)002-e.pdf](http://www.venice.coe.int/docs/2011/CDL-DEM(2011)002-e.pdf).

⁷⁹ Expert opinion on the draft Law of the Republic of Kazakhstan “On Lobbying”, Legal Policy Research Center, May 2010. Source: http://www.lprc.kz/ru/index.php?option=com_content&task=view&id=184.

- To consider allocating budgetary funding to parties which received a certain percentage of votes (for example, 2-3%), even if they were unable to pass the election threshold.
- To ensure transparency of party finances, including during elections, in particular, by setting detailed requirements to the contents and form of annual reports, which have to undergo a prior control by the state body, ensuring publication of detailed reports on receiving and spending funds by parties and candidates in the course of election campaigns. To consider cancelling the possibility of revoking election registration for providing false information in declarations and for violation of the financing rules.
- To ensure independence of the body in charge of control over political parties' financing, assign to it a duty of carrying out a regular monitoring and control over observance of the legislation on financing and transparency of political parties and election campaigns.
- To strengthen integrity rules for political servants, which are not covered by the Law on the Civil Service (conflict of interests, codes of ethics, financial control, liability for corruption and related offences).

3.8. Judiciary

No previous recommendation.

Organization of the judiciary and status of judges in Kazakhstan are regulated by the Constitution of the Republic of Kazakhstan, constitutional laws "On the Judiciary and Status of Judges in the Republic of Kazakhstan" and "On the Supreme Judicial Council of the Republic of Kazakhstan" and subordinated legal acts. In Kazakhstan there exists the following three-tier judicial system: the first tier – district (city) and specialized courts, which deliver court decisions on criminal, civil and administrative cases (courts of first instances). The second tier – regional courts and their equivalents that review appeals and cassations on decisions of district courts, which have not come into effect. The third tier – the Supreme Court – the court of supervisory instance.

In accordance with Article 77 of the Constitution of Kazakhstan, as well as Article 25 of the Constitutional Law "On the Judiciary and Status of Judges in the Republic of Kazakhstan", independence of judges is protected by the Constitution and the law. When administering justice judges are independent and obey only to the Constitution and the law. No one is allowed to interfere with administration of justice and to exert any influence on a judge and members of a jury. Such actions are prosecuted. A judge is not obliged to give any explanations on merits of the considered or pending court cases.

According to Article 82 of the Constitution and the Law, chairpersons and judges of local and other courts (except for the Supreme Court) are appointed by the President of Kazakhstan at the recommendation of the Supreme Judicial Council – a body established by the President for performing functions of selection of candidates for judges and dismissing judges. Chairperson and judges of the Supreme Court are elected by the Senate at the proposal of the President of Kazakhstan, based on a recommendation of the Supreme Judicial Council. The Supreme Judicial Council is formed solely by the President. Chairperson of the Supreme Court, in cases envisaged in the Constitutional Law, submits to the Supreme Judicial Council proposals and materials on termination of powers of chairpersons, chairpersons of judicial panels and judges of the Republic's courts. Decision on dismissal of a judge from office is taken by: 1) resolution of the Senate – with respect to the Chairperson, judges of the Supreme Court at the proposal of the President of Kazakhstan; 2) President's Decree – with respect to chairpersons of judicial panels of the Supreme Court, chairpersons, chairpersons of judicial panels and judges of local and other courts.

The vital role of the judiciary in combating corruption requires not only establishing mechanisms ensuring integrity of judges and suppression of corruption among them but, first of all, requires a real **independence of the judiciary**.⁸⁰ In absence of external and internal independence of courts they cannot effectively perform their functions and guarantee protection of rights and freedoms. In this respect and also in the light of international standards on judicial independence⁸¹, it is necessary to highlight the following problems in organization of the judiciary in Kazakhstan. Many of these issues as well as other important comments are included in the Joint Opinion on the Constitutional Law “On the Judiciary and Status of Judges in the Republic of Kazakhstan” prepared by the Venice Commission and OSCE/ODIHR in June 2011.⁸²

1. Unilateral appointment by the President of the Supreme Judicial Council, which plays a key role in appointment and dismissal of judges. According to international standards⁸³, the majority of members of the Council (not less than half) should be elected by judges from among themselves ensuring representation of various levels of the judiciary.

Big concern relates to the status of the Supreme Judicial Council (SJC). The SJC is mentioned in the Constitution of Kazakhstan several times. Article 82 of the Constitution refers to a special law which should regulate its status and organization of work. The Law on the SJC defines it as “an institution without establishment of a legal entity created for ensuring constitutional powers of the President of the Republic of Kazakhstan on formation of courts, guarantees of independence of judges and their immunity”. The essence of the status of this constitutional body is more precisely regulated in the Law “On the President of the Republic of Kazakhstan”, which provides that the SJC is a consultative and advisory body to the President of Kazakhstan (Article 33). The President receives quarterly reports by the SJC Chairperson. Employees of the SJC’s secretariat are employees of the Presidential Administration; maintenance and provision of activities of the SJC is ensured by the State Legal Department of the Presidential Administration.⁸⁴

This situation is not in compliance with international standards and seriously affects the judiciary’s independence. The Supreme Judicial Council should be a judicial body (body of the judiciary), be independent from the legislative and executive bodies and even from the Head of the State.

2. Classification of members of the Constitutional Council of the Republic of Kazakhstan, Chairperson of the Supreme Judicial Council, heads of secretariats of the Supreme Court and the Constitutional Council as political civil servants (see the respective section of the report).

⁸⁰ See, for example, Article 11 of the United Nations Convention against Corruption.

⁸¹ Among them: Universal Declaration of Human Rights, International Pact on Civil and Political Rights, documents of Copenhagen, Moscow, Istanbul meetings of the OSCE Conference on the Human Dimension, The Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, OSCE/ODIHR.

⁸² Source: [http://www.venice.coe.int/docs/2011/CDL-AD\(2011\)012-rus.pdf](http://www.venice.coe.int/docs/2011/CDL-AD(2011)012-rus.pdf).

⁸³ Recommendation of the Committee of Ministers of the Council of Europe No. CM/Rec(2010)12 regarding the judges: independence, efficiency and responsibility, 17 November 2010 (clause 27), Opinion No. 10 of the Consultative Council of the European Judges “Council for the Judiciary at the service of society” of November 2007 (Section III), *Magna Carta* for judges approved by the Consultative Council of the European Judges in November 2010 (clause 13), Kyiv recommendations OSCE / ODIHR (clause 7).

⁸⁴ Source:

http://www.akorda.kz/ru/the_administration_of_the_president/presidential_councils/supreme_judicial_council_of_kazakhstan.

3. Discretionary power in appointment of judges of local and other courts (except for the Supreme Court) by the President of the Republic of Kazakhstan. Submission of recommendations (on such appointments) by the Supreme Judicial Council does not limit the right of the President to reject the proposed candidate. The fact that in practice the cases when the President rejects proposed candidates are very rare may indicate that there is a prior agreement with the President and his Administration with respect to the future candidates, which would not be surprising since the SJC itself is formed by the President. The same problem is typical for appointment of the Supreme Court's judges, since the candidates are introduced by the President to the Senate based on the recommendation of the SJC. In general, it is advisable to remove political state bodies from the procedure for appointment and dismissal of judges. If it is impossible to do so, then it is necessary to maximally formalize the procedure for introduction of candidates so that the main decision would be adopted by the judicial council (provided that the majority of its members are elected by judges), while the political bodies would only endorse Council's decision.

4. Appointment of court chairpersons by the President at recommendation of the Supreme Judicial Council (while Chairperson of the Supreme Court is appointed by the Senate at recommendation of the President on the basis of recommendation of the Supreme Judicial Council). The best way to appoint court chairpersons, which ensures to the maximum possible level their independence, is their election either by judges of the respective court or by a judicial self-government body (conferences of judges or even the Supreme Judicial Council in case its composition is changed). The problem also exists with respect to vague and too broad definition of powers of court chairpersons (for example: "organizes consideration of court cases by judges", "ensures work on combating corruption and observance of the judicial ethics", "issues orders"). Court chairpersons keep excessive powers and possibilities to influence the career growth of judges, bringing them to liability, assigning qualification classes, etc.

5. Possibility to extend the term of office of the judge (after reaching 65 years) by the Chairperson of the Supreme Court subject to consent of the Supreme Judicial Council (for not more than five years).

6. From the standpoint of the judicial independence, provisions on **termination of powers** and **bringing of judges to disciplinary liability** are very problematic.

The Law (Article 34) provides for such separate grounds as a conclusion of the Judicial Jury and a decision of the Disciplinary and Qualification Judicial Board "on necessity of dismissal of a judge from his office for commission of disciplinary offences or non-observance of requirements, which apply to the judge".

The Judicial Jury consists of seven judges⁸⁵ and defines "professional fitness" of a judge. A ground for consideration of a judge's case at the Judicial Jury is a decision of the plenary session of a regional court or the Supreme Court on sending to the Judicial Jury of materials with respect to the judge who has "low rates in delivering justice or two and more disciplinary penalties for violation of legality in the course of consideration of cases". Upon consideration of the case the Judicial Jury issues one of the following decisions: 1) on the judge's fitness for the job; 2) on taking necessary measures for increasing professional qualification of the judge (assigning the judge to a training, mentoring of the judge, organizing internship of the judge in a higher court and others); 3) on the judge's inconsistency with his position due to professional unfitness. The decision of the Judicial Jury is final

⁸⁵ The composition of the Judicial Jury is elected by a secret ballot on the alternative basis for the term of three years by a plenary session of the Supreme Court by recommendation of the Chairperson of the Supreme Court from among effective judges as well as retired judges (Regulations on the Judicial Jury, approved by the President of Kazakhstan).

and cannot be appealed. The Law contains minimum provisions on the composition of the Judicial Jury and its work, all relevant issues are specified in the Regulations approved by the President of Kazakhstan.

A judge can be brought to disciplinary liability for: 1) violation of legality in the course of consideration of court cases; 2) commission of a dishonouring offence contradicting to the judicial ethics; 3) gross violation of the labour discipline. Cancellation or change of the judicial decision as such does not trigger liability of the judge, if there were no gross violations of the law mentioned in the judicial decision of the higher court instance.⁸⁶ There are the following types of disciplinary sanctions: a warning; a reprimand; a release from the office of a court's chairperson or judicial panel's chairperson for improper performance of official duties; a dismissal from a judge's office.

The requirements which apply to a judge are specified in Article 28 of the Law: to strictly observe the Constitution and laws of the Republic of Kazakhstan, to adhere to the judge's oath; in carrying out his constitutional duties associated with the administration of justice, and in unofficial relations, to comply with requirements of judicial ethics and to avoid anything which may denigrate the authority or dignity of the judge or cast doubt in his impartiality and objectiveness; to oppose any appearances of corruption and any attempts of illegal interference in his activity associated with the administration of justice; to observe the secrecy of judicial deliberations; to observe requirements specified in the Constitution and the Law concerning incompatibilities with other types of activities.

The Law does not define which and how many particular disciplinary offences may trigger dismissal from the office. The same grounds may be used for dismissal from the office of a judge by the Judicial Jury and the Disciplinary Board (violation of legality), while functions of the Judicial Jury and the Disciplinary Board are partially overlapping. Such ground for dismissal as violation of labour discipline seems to be unjustified.⁸⁷ The requirements to the judge are stated vaguely (for example, the wording "doubts in honesty, fairness, objectiveness and impartiality" of a judge may cover many situations, likewise violation of the requirement to adhere to the judge's oath). Such terms as "professional unfitness", "low rates in delivering justice", "violation of legality" are also quite vague. It is not allowed to file appeal against decisions of the Judicial Jury and disciplinary boards, which contradicts the human right for a judicial remedy. Moreover, the respective procedures are not specified in the law but are regulated in subordinated legal acts. There is no separation of functions of initiating a disciplinary proceedings and taking decisions in the disciplinary boards, which violates the principles of a fair trial ("nobody can be a judge in his own case").⁸⁸ Generally, there is no legal certainty in provisions on the grounds for dismissal of judges from office and bringing them to liability⁸⁹, which violates the rule of law principle and seriously undermines independence of judges.

⁸⁶ According to the Normative Resolution of the Supreme Court of 14 May 1998 No. 1 "On Certain Issues of Implementation of Legislation on the Judiciary in the Republic of Kazakhstan", "a gross violation of the law shall mean an obvious and material violation of the law committed by a judge intentionally or due to his bad faith, negligence or lack of knowledge of law. The fact of the gross violation of the law shall be certified by a court which quashed or changed the court decision on that ground and shall be reflected in the decision of that court. Quashing or change of the court decision connected with evaluation of evidence cannot serve as a basis for judge's responsibility".

⁸⁷ See Joint Opinion of the Venice Commission and OSCE / ODIHR, paragraph 62.

⁸⁸ Ibid., paragraph 66.

⁸⁹ In this connection one can refer to the resolution of the Constitutional Council of the Republic of Kazakhstan, which noted that "the law should comply with requirements for legal accuracy and predictability of consequences, i.e. its norms should be formulated with the sufficient level of precision and be based on clear criteria, excluding possibility of arbitrary interpretation of the provisions of law" (Normative Resolutions of 27 February 2008 No. 2 and of 11 February 2009 No. 1).

Besides, in practice the term “low rates” of work mean any cases of quashing of court decisions by the higher court instances regardless of the ground for quashing.⁹⁰ This also contradicts to international standards.⁹¹

In February 2009 the Regulations on the Republican and Regional Disciplinary and Qualification Boards of Judges was supplemented with two new grounds for initiation of disciplinary proceedings: the fact of commission by a judge of a disciplinary offence connected with corruption or facilitating corruption, as well as commission of an offence which “gained wide publicity”. On these grounds, upon submission of the Chairperson of the Supreme Court, the Republican Board can consider a case with respect to any judge of the Republic. This broadens even more possibilities of bringing judges to liability. Furthermore, these grounds are not envisaged in the Law.

The Republican and Regional Disciplinary and Qualification Boards of Judges are bodies which consider disciplinary cases, have the right to initiate disciplinary proceedings and to impose disciplinary sanctions on judges. Their activities are specified in the Regulations approved by the President. The Republican Board is elected by the plenary session of the Supreme Court in the number of not less than seven members for the term of 2 years from among judges of the Supreme Court. The regional boards are elected for the term of two years by the plenary sessions of regional courts and their equivalents by a secret ballot from among judges of regional courts and their equivalents in the number from three to seven members. Besides, the order of the Chairperson of the Supreme Court (of 7 September 2005) provides for establishment of "an inter-plenary session and operative meeting of local courts", which is also vested, in particular, with discussion of results of examination of complaints by individuals and legal entities, consideration of issues of “observance of the judicial and official ethics”. Existence of such an institution is not envisaged in the law and causes additional confusion in the issues of disciplinary liability of judges.

According to the provided statistics, in 2010 the Republican and Regional Disciplinary and Qualification Boards of Judges issued 168 decisions imposing disciplinary sanctions with respect to 152 judges (in 2009 – 180 decisions with respect to 159 judges). From them, 22 judges (in 2009 – 16 judges) were brought to disciplinary liability for commission of dishonouring offences contradicting to the judicial ethics. 15 judges (in 2009 – 16 judges) were dismissed from the offices by decisions of the disciplinary and qualification boards of judges. Four judges (in 2009 – seven judges) were found to be unfit by the Judicial Jury. As of beginning of 2011 there were overall 2,189 judges in Kazakhstan.⁹² During the last five years around 40 percent of judges⁹³ were brought to disciplinary liability, which is a substantial number.

A “judicial monitoring” performed by the Supreme Court, which means a systematic analysis of activities of judges of district and regional courts as regards quality and timeliness of delivering of justice, gives rise to concern. The following indicators are used – the number of quashed or changed judicial decisions due to gross violations of legality. The declared goal of the monitoring is to react to violations of legality committed by judges in the course of consideration of cases and if there are grounds for this to taking measures of reviewing judge’s professional fitness.⁹⁴ The monitoring

⁹⁰ G.Suleimanova, Judicial Jury: ideas and reality. Source: <http://iuaj.net/book/export/html/472>.

⁹¹ See, for example, Recommendation of the Committee of Ministers of the Council of Europe No. CM/Rec(2010)12 of 17 November 2010 (paragraph 70): “Judges should not be personally accountable where their decision is overruled or modified on appeal.”.

⁹² Source: <http://www.zakon.kz/193937-predsdatel-vysshego-sudebnogo-soveta.html>.

⁹³ From the speech of the Supreme Court’s Chairperson, 8 July 2011. Source: <http://www.inform.kz/rus/article/2392164>.

⁹⁴ Source: http://supcourt.kz/rus/news/news_0059.html.

identifies judges with the lowest rates of delivering justice during a certain period of time in comparison with other judges in the region with similar workload. Upon results of the monitoring decision is taken on whether to forward materials to the Judicial Jury for examination of the judge's professional fitness. Based on the monitoring results in 2010, 40 judges were released from office by the President's Decrees (55 percent more compared to 2009).⁹⁵ The problems with analysis of the "professional fitness" of judges were mentioned above. Besides, it should be noted that issues of "quality" of judicial consideration should not serve as a ground for imposing disciplinary sanctions – judicial errors should be corrected by higher courts in the course of the judicial proceeding.

The principle of irremovability and protection from arbitrary dismissal of judges is another important element of guarantees of the judicial independence. In this respect **reduction of the maximum number of judges** and their subsequent dismissal performed at the end of 2010 gives rise to concern. These measures were taken to implement the President's Decree of September 2010 "On the Measures for Optimization of the Number of Personnel in the Bodies Financed at the Expense of the State Budget...", which envisaged a universal 15% reduction in the number of staff in the state authorities, including the maximum number of judges (judges of district courts – by 292 units, judges of regional courts – by 86 units).⁹⁶ The initial selection of judges subject to redundancy was carried out by commissions established by chairpersons of regional courts; proposals were summarised by the Supreme Court and forwarded to the Supreme Judicial Council which then submitted proposals to the President for final decision. Such dismissal of judges, even when performed within the general redundancy of the public servants, appears to be problematic both from the standpoint of international standards and the laws of Kazakhstan, since the Constitutional Law on the Judiciary and Status of Judges (Article 34) does not envisage such a ground for dismissal of a judge from office, but provides that "powers of judges can be terminated only on the grounds and in accordance with procedures envisaged by the present Constitutional Law" (Article 24). Judges should enjoy a special status and guarantees of irremovability that are different from other public servants. It is necessary not to allow dismissal of judges in that way; redundancy of the general number of judges, if there is an exigency in doing so and if the current judicial workload permits, can be done through gradual non-filling of vacancies, which appear, but not through dismissal of existing judges.

During 2009-2010 there were initiated 11 **criminal cases on corruption crimes** with respect to judges. In 2011 six judges of the Supreme Court were dismissed from office for non-observance of the statutory requirements due to accusation in commission of corruption crimes, two of them were arrested. Due to this fact the Chairperson of the Supreme Court resigned (was dismissed by the Senate in April 2011).

The procedure for selection of candidates for the position of a judge is regulated by the Constitutional Law on the Judiciary and Status of Judges, which provides that the Supreme Judicial Council carries out competitive selection; The Law sets the requirements for such candidates, in particular, passing of a qualification exam and a probation (as an alternative to probation a candidate can undergo training in the Institute of Justice of the State Management Academy at the President of Kazakhstan). The Constitutional Law on the Supreme Judicial Council specifies more detailed

⁹⁵ Source: <http://www.zakon.kz/195393-predsdatel-verkhovnogo-suda-rk.html>.

⁹⁶ Due to the existing vacancies of judges (207) the actual number of dismissed judges was less than mentioned in the Decree. Besides, according to information of the Chairperson of the Supreme Judicial Council, 88 judges resigned, 6 judges were dismissed from office in connection with transfer to another job, powers of 2 judges were terminated due to their death, 4 judges were dismissed from office according to decisions of the Judicial Jury and the Disciplinary and Qualification Boards of Judges for their incomppliance with the requirements, including 3 judges - for corruption offences. Therefore, except for 207 vacancies and 136 judges dismissed for various reasons, only 65 judges were made redundant. Source: <http://www.zakon.kz/193937-predsdatel-vysshego-sudebnogo-soveta.html>.

procedures. The competition is envisaged for selection of judges not only of local but also of regional courts (although the competitive procedures do not apply to the Supreme Court's judges). One of the requirements to candidates is passing of qualification exam, which consists of a computer test and an interview with the commission on examination questions.

It is commendable that the law sets such basic criteria for selection of candidates for vacant positions of district courts judges as "high standard of knowledge, moral and ethical qualities and impeccable reputation". However, the Law also provides that priority is given to persons: 1) who passed qualification exam in the specialized Master's programme (*i.e.* in the Institute of Justice); 2) who have at least five years of experience in legal profession in the state authorities supporting the judiciary's activities, law enforcement bodies and the bar; 3) according to results of the qualification exam. The criterion related to the length of experience is questionable as it does not necessarily reflect the standard of knowledge and skills of the candidate (while service in the law enforcement bodies rather has a negative impact and will not always be positive for the future judge). Also it is unclear in what is the weight of such criteria. In the future it is necessary to consider a possibility of introducing an obligatory training in the specialized institution for judges (Institute of Justice), as a pre-condition for holding the position of a judge.

Introduction of electronic tests is a positive step. However, the interview, which may have subjective effect on evaluation of the candidate, gives rise to concern. The procedures for holding qualification exam should be specified directly in the law and not in subordinated legal acts. It is also advisable to revise the status of the Institute of Justice, since in accordance with international standards curricula and standards of judicial training should be controlled by the judicial bodies, for example, a judicial council.⁹⁷

Since 2009 the Supreme Court started publishing in the local official printed mass media and on the web-sites of regional courts information on the candidate trainees for the position of a judge being on probation in courts. As of April 2011 information is published in the republican official publications and on the web-site of the Supreme Court about candidates nominated for positions of chairpersons and chairpersons of panels in local courts.⁹⁸

In accordance with requirements of Article 10 of the Law "On the Supreme Judicial Council of the Republic of Kazakhstan" qualifications exams for judicial candidates are held by the Qualification Commission established at the Supreme Judicial Council. The Commission consists of: 1) the Chairperson of the Commission and five experts from among law professors appointed by the Supreme Judicial Council; 2) three judges designated by the Judicial Jury from among its members on a rotational basis. Currently the chairperson of the Qualification Commission at the Supreme Judicial Council is the head of division in the State Legal Department of the Presidential Administration – Secretary of the Supreme Judicial Council. To ensure independence of judicial selection it is necessary to revise the existing composition of the Qualification Commission, which, like the Supreme Judicial Council itself, should consist of the majority of judges elected by their peers. It is also necessary to eliminate influence of the Presidential Administration on the judicial selection. As was noted above, it is possible (but not encouraged) to engage political institutions, like the President, into the procedure for appointment (but not selection) of judges, however, their role should be limited only to formal approval of the candidates selected by an independent body.

⁹⁷ See, for example: Opinion No. 4 of the Consultative Council of European Judges (CCJE) on appropriate initial and in-service training for judges at national and European levels, section II (http://www.coe.int/t/dghl/cooperation/ccje/textes/Avis_en.asp); European Charter on the Statute for Judges, paragraph 2.3; OSCE/ODIHR Kyiv Recommendations, paragraph 19.

⁹⁸ Source: <http://www.zakon.kz/pravovye-novosti/223151-bektas-beknazarov-trevozhit-tot-fakt.html>.

Another important element of judicial independence is sufficient **financing of the judiciary** from the state budget and provision of necessary material resources. According to Article 80 of the Constitution financing of courts, provision of judges with housing is provided from the republican budget and must ensure the possibility of complete and independent administration of justice. However, in June 2008 the Constitutional Council of Kazakhstan admitted again that the constitutional requirement of Article 80 “is implemented in practice not to a full extent, which often make judges dependant on the local executive authorities and facilitates corruption”.⁹⁹

Remuneration of judges is another element of independence. In Kazakhstan these issues are regulated by the President’s Decree, which in itself is not in line with the international standards, according to which remuneration of judges should be set in the law and should not depend on decisions of the executive power.¹⁰⁰ Payment of bonuses to judges (a bonus can constitute 30-50 percent of the salary) is widely used, which also may negatively affect the judicial independence¹⁰¹ and may lead to abuses¹⁰². The amounts of remuneration for judges, including the amount of wage and possible increments, for example, for the judicial length of service, qualification class, extra payments for special employment conditions (e.g., for working overtime during consideration of election disputes, judges on duty) and holding of an administrative position in a court, should be fixed directly in the law.

The rules of judicial behaviour are regulated in Article 28 of the Constitutional Law on the Judiciary and Status of Judges and the **Code of Judicial Ethics**, adopted by the 5th Congress of Judges on 18 November 2009. At each regional court there is a Judicial Ethics Commission of the Union of Judges of the Republic of Kazakhstan. According to Article 7 of the Code of Judicial Ethics in case of its violation by a judge there may be applied “measures of social influence” envisaged in the Regulations on the Judicial Ethics Commission, the latest version of which was approved by the Central Council of the Union of Judges on 5 February 2010. The commissions may consider materials, applications, complaints on the judges’ violations of judicial ethics either on their own initiative, or in response to applications and complaints of individuals, officials and organizations, in particular, the Chairperson of the Supreme Court, chairpersons of regional courts and their equivalents, heads of the Supreme Judicial Council and the Judicial Jury; also chairpersons of the Disciplinary and Qualification Board can address the Commission with a request to issue an opinion on whether a judge’s act or his behaviour can be considered as a violation of the Code of Judicial Ethics. According to the Regulations if the commission acknowledges the fact of violation of the Code of Judicial Ethics, it can confine itself to discussion, pass a vote of social censure or raise a question with the respective regional Disciplinary and Qualification Board of Judges on initiation of disciplinary proceedings with respect to the judge. Generally, consideration of the judicial ethics issues by a associations of judges is in compliance with international practice and is welcome. However, it should be clearly specified that bringing of a judge

⁹⁹ Source: <http://www.zakon.kz/115047-poslanie-konstitucionnogo-soveta.html>.

¹⁰⁰ See, for example: Recommendation of the Committee of Ministers of the Council of Europe No. CM/Rec(2010)12 of 17 November 2010, paragraph 53.

¹⁰¹ See Kyiv Recommendations by OSCE/ODIHR, paragraph 13. Also according to the Recommendation of the Committee of Ministers of the Council of Europe No. CM/Rec(2010)12 of 17 November 2010 (para. 55): “Systems making judges’ core remuneration dependent on performance should be avoided as they could create difficulties for the independence of judges”.

¹⁰² For example, the Accounting Committee of Kazakhstan found out that in 2009-2010 judges and employees of the secretariat of the Supreme Court received bonuses in the amount exceeding 64 mln. tenge, which was done in violation of the rules for provision of material aid and setting of wage increments for employees of the authorities of the Republic of Kazakhstan financed from the state budget. Source: <http://www.zakon.kz/pravovye-novosti/223664-schetnyjj-komitet-nashel-narusheniya-v.html>.

to disciplinary liability for violation of judicial ethics is possible only after establishment of the violation of the Code of Judicial Ethics by the decision of the Judicial Ethics Commission. It is also recommended to specify that the ground for disciplinary liability can only be a gross violation of judicial ethics.¹⁰³

The Constitutional Law “On the Judiciary and Status of Judges of the Republic of Kazakhstan” does not include a mechanism for **declarations of assets and income by judges**. It is also unclear whether the duty to submit tax declarations according to paragraph 2 of Article 9 of the Law on the Fight against Corruption applies to the judges, as it covers “persons occupying state positions”. However, even if this provision applies to judges, still, as noted above in this report, the existing general declaration regime is not effective. It is necessary to provide for mandatory publication of declarations of assets and income of judges.

One of the positive developments is the **automated system for distribution of court cases** among judges which was introduced in all courts of Kazakhstan. According to information provided by the Kazakh authorities, the system takes into account a number of parameters: overall workload of judges, language of judicial proceedings, specialization of the judge, preparation of summaries by judges, preparation of overviews; the system also takes into account whether a judge is on vacation or in business trip and what is the complexity level of the case. It is always possible to check compliance with the technological process for distribution of cases among judges. The registration card with information on distribution of the case is inserted in the case-file. At the same time, representatives of civil society organizations noted cases of interference with the electronic system for distribution of cases. It is necessary to ensure a maximum disclosure of information concerning distribution of a particular case and also to stipulate liability for illegal interference with the electronic system.

In general, in courts of all levels functions the Uniform Automated Information and Analytics System of Judicial Bodies of Kazakhstan, which handles registration, recording of correspondence, court cases, materials, automated compilation of statistics reports, collection of statistics reports on the regions and the republic, creation of electronic database of judicial acts and other documents, determination of the workload of judges and secretariats, automated distribution of cases. The Law of 15 July 2010 amended the Civil Procedure Code so that now it is possible to file a lawsuit and other documents in electronic form. There is a public database of electronic texts of judicial decisions on the official web-site of the Supreme Court (www.supcourt.kz), which is regularly updated and as of July 2011 contained more than 570,000 documents. Also in April 2011 on the official web-site of the Supreme Court (<http://eaias.supcourt.kz>) public access granted to information provided by courts regarding case movement, including date of proceedings, copies of judicial decisions, name of the judge as well as information on the judiciary, addresses and contact details of the courts.¹⁰⁴ Such openness of information on the courts and their decisions is an important component of prevention of corruption in the judiciary. At the same time the group of monitoring received information about problems with obtaining access to court sessions, which in the most cases should be open¹⁰⁵, as well as a prohibition to record proceedings with technical means.

¹⁰³ The respective standards can be found in the Opinion No. 3 of the Consultative Council of European Judges (CCJE) on the principles and rules governing judges’ professional conduct, in particular ethics, incompatible behaviour and impartiality.

¹⁰⁴ Source: <http://inform.kz/rus/article/2367207>.

¹⁰⁵ See, for example, OSCE/ODIHR reports on the results of monitoring of the judicial proceedings in Kazakhstan. Source: <http://www.osce.org/ru/astana/24154>, http://lex.kz/netcat_files/154/63/h_26402f64f4bf817b46106ce704ac2a90.

According to information provided by the state authorities of Kazakhstan, every year the **curricula** of the in-service training of judges and employees of the judiciary in the Institute of Justice of the State Management Academy under the President of Kazakhstan include topics of lectures and seminars on professional ethics, prevention of offences in the judiciary, practice of consideration of cases on corruption and other official crimes (for judges considering criminal and civil cases), consideration of administrative corruption offences (for judges of administrative courts) and others. In 2009-2010 there were also held separate seminars on such topics as “Settlement of Corporate Disputes and Issues Hostile Takeovers (Raidership)”, “Overcoming Resistance to Criminal Proceedings”, “Improving Image of the Judiciary”. For the candidates for master's degree the Institute of Justice delivers a course of lectures on anti-corruption issues; in 2010/2011 academic year a new discipline “Anti-corruption Policy of the Republic of Kazakhstan” was introduced for the second-year students.

New Recommendation 3.8.

- **To amend legislative acts in order to strengthen independence of the judiciary and judges, in particular: to change the legal status and arrangement for providing for activities of the Supreme Judicial Council, the majority of members of which should be judges elected by their peers; to limit to the maximal possible extent influence of political bodies (the President, the Parliament) on the appointment and dismissal of judges; to consider a possibility of electing to administrative positions in courts by voting of judges of the relevant courts; to revoke powers of court chairpersons related to careers of judges, their material provision, bringing to liability; to envisage in the law a detailed procedure for bringing judges to disciplinary liability, as well as - in accordance with the principle of legal certainty and the right to defence - to limit the number of and clearly define grounds for disciplinary liability and dismissal, envisage a uniform system of bodies deciding on such issues and the possibility of appealing their decisions in court; to specify in the law the salary rates for judges and an exhaustive list of all possible wage increments, eventually cancelling bonuses for judges.**
- **To limit to the maximum possibilities of subjective influence on the procedure for selecting judges, to ensure publication of detailed information on all stages of selection (list of candidates, results of tests and other components of qualification exam, results of competition, etc.) and to ensure access of the public and representatives of the mass media to the respective meetings. To consider establishing an obligatory training in the Institute of Justice in order to qualify for participation in the judicial selection and consider re-subordination of the Institute of Justice to the body of the judiciary.**
- **To introduce mandatory declarations (without link to tax obligations) of assets, income and, as far as possible, expenses of judges and their family members with subsequent publication of such declarations.**

3.9. Private sector

Previous Recommendation 33

Strengthen internal control system to assure effective detection and prevention of money laundering. Make external auditors liable to check if their clients are obliged to any provision resulted from the draft law referring money laundering and to examine if there are any risks involved in money laundering. Impose audit companies to define in their internal acts procedures relating suspicious transactions and identification of entities they enter into business relationship, and ask them to keep adequate records. In cooperation with professional associations of auditors develop a list of indicators of suspicious transactions, and ensure their dissemination to the auditors, which can help identifying business events and circumstances that may indicate money laundering activities.

In September 2007 Kazakhstan was **not compliant** with this recommendation.

Previous recommendation related to the anti-money laundering provisions and the role of auditors. The new section on integrity in the private sector (added in the second round of monitoring) covers other issues which will be discussed below. As for the above recommendation 33, no information about its implementation was provided. At the same time in August 2009 Kazakhstan adopted the Law “On Counteracting Legalization (Laundering) of Crime Proceeds and Financing of Terrorism” which came into effect on 9 March 2010. Under this Law all audit firms were designated as the financial monitoring subjects. Relevant changes were also made in the Law “On Auditing Activities”, according to which auditors are obliged to provide information in accordance with the legislation on counteracting legalization (laundering) of criminally received proceeds to the head of the audit firm, who in its turn should forward this information to the authorized state body in the financial monitoring field. This relates to implementation of only the part of the said recommendation.

Therefore, Kazakhstan is **largely** compliant with this recommendation.

In their answers to the second round of monitoring questionnaire the Kazakh authorities noted that there is no prohibition with respect to setting off-balance sheet accounts and also did not refer to any statutory provisions which prohibit effecting off-balance or improperly identified transactions, recording of non-existent expenses, accounting of liabilities with incorrect identification of the subject, use of falsified documents. At the same time legislation on criminal and administrative offences envisages liability for some of the mentioned acts. For example, the Code of Administrative Offences prohibits compiling distorted financial reports, concealing data which should be reflected in the accounting documents (Article 178), executing operations by banks without respective reflection of their results in the accounting documents (Article 168-2), while the Criminal Code prohibits evasion from documenting data envisaged by the accounting legislation or recording deliberately false information on economic and financial activities of the organization in the accounting documents (Article 218).

It should also be noted that according to the Law **on Accounting and Financial Reporting** the following legal entities are obliged to apply International Financial Reporting Standards: major entrepreneurial entities¹⁰⁶ and organizations of public interest (financial organizations, joint stock companies, organizations using subsoil resources and organizations with state participation, as well as public enterprises based on the right of operating control). All other legal entities can use national standards for financial reporting.

According to the Law on Auditing Activities the following entities should undergo **obligatory audit**: joint stock companies; insurance (re-insurance) organizations; pension funds and companies managing pension assets; major participants of the open pension fund, as well as legal entities, in which a pension fund has substantial share; users of subsoil resources; banks, banking holdings and organizations in which the bank and/or bank holding are major participants; natural monopolies; civil aviation organizations; cereal receiving stations; fund for guaranteeing insurance compensations; legal entities of the Republic of Kazakhstan, which concluded investment contracts envisaging investment preferences; cotton processing organizations; developers and construction design companies in accordance with the law on share participation in the housing construction. Those organizations, which fall under the obligatory audit requirements and which in accordance with the

¹⁰⁶ Major entrepreneurial entities are legal entities engaged in private entrepreneurship with annual average number of personnel of over 250 persons *or* with the total annual aggregate value of assets exceeding 325,000 monthly calculation rates (Article 6 of the Law on Private Entrepreneurship).

legislation of Kazakhstan publish in periodic printing publications their annual financial reports, are obliged to publish their audit reports together with the annual financial reporting. Audit is performed in accordance with the International Auditing Standards and the Code of Ethics, which is approved by the Chamber of Auditors of the Republic of Kazakhstan. The Law also stipulates adequate rules for ensuring independence of auditors from the audited persons, while the Code of Administrative Offences envisages liability for provision by the audited person to the audit firm during an audit of untimely, false or incomplete information which resulted in release of false audit report (Article 185).

Article 19, paragraph 7, of the Law “On Accounting and Financial Reporting” provides that upon decision of the Government of the Republic of Kazakhstan there may be established a depositary for organizations of the public interest, which are obliged to file thereto their financial reports in accordance with the procedure set by the authorized body. To implement this clause Resolution of the Government of 23 December 2008 No. 1228 established the Financial Reporting Depositary as an electronic database of financial reports, which are submitted annually by the public interest organizations and which is publicly open. Web-portal of the Depositary is located on-line at www.dfo.kz. The establishment of this Depositary and Internet access thereto are a positive example of financial disclosure.

The legislation on fighting money laundering vests auditors with obligations of the financial monitoring subjects, in particular, with respect to informing the Financial Monitoring Committee, proper examination of clients, establishing rules of internal control and compliance programmes. Besides, according to the Law on Auditing Activities audit organizations are obliged to provide to the audited person information on the discovered violations in the accounting, financial reporting; in case of audit of state institutions, state enterprises, state-owned legal entities audit organizations should also provide to the audited entities information on the revealed violations of law in the course of use of the budgetary funds, credits, related grants, public assets, state-guaranteed loans.

Legislation on **joint stock companies** envisages some mechanisms for ensuring integrity. In particular, there is a requirement for ensuring transparency (for example, availability of a corporate web-site, information disclosure on affiliated persons, publication of consolidated financial reporting, information disclosure to shareholders) and good corporate governance (obligatory corporate governance code for public joint stock companies, special requirements for interrelated and major transactions, etc.). However, the majority of these provisions do not apply to the **National Wealth Fund “Samruk Kazyna”**, on which there was adopted a special law in February 2009. According to some estimates, the Fund’s group controls over half of the national assets.¹⁰⁷ Such enormous significance of the Fund and its special powers and privileges (for example, the right to approve the procurement rules on its own) requires not just using the general rules of openness and good governance in the joint stock companies, but establishing by law of special strict systems for reporting, information disclosure, internal and external audit, financial control. Absence of such provisions creates wide opportunities for corruption. In 2009 Standard&Poor's rated transparency of Samruk Kazyna at 24 points out of 100 possible.¹⁰⁸

Introduction of **the internal corporate compliance programmes** in Kazakhstan is mainly spread among companies with foreign investments and offices of transnational companies. At the same time projects on improving corporate governance are introduced in the national companies and national management holdings. For example, the Fund Samruk Kazyna together with the international audit groups perform diagnostics of the corporate governance systems of major

¹⁰⁷ 2011 Investment Climate Statement, the US Department of State, March 2011. Source: <http://www.state.gov/e/eeb/rls/othr/ics/2011/157302.htm>.

¹⁰⁸ Ibid.

companies of the Fund's group; the work is being carried out to obtain the corporate governance rating GAMMA of Standard&Poor's; the Corporate Governance Code and the Business Ethics Code were approved.¹⁰⁹ At the same time only 11 Kazakh companies participate in the United Nations Global Compact, from which 4 are small and medium enterprises and 2 ("Kazakhtelecom", "Kazpost") are mentioned to have failed to submit their progress reports on implementation of the Global Compact programme. It should be noted that only the Fund Samruk Kazyna has 43 subsidiary and dependant companies. Therefore, the state authorities of Kazakhstan are recommended to closely co-operate with the businesses and civil society organizations and to take active measures to facilitate promotion of internal corporate compliance programmes and ethics rules. Such work should be based on international best practices and the existing international standards, which are contained, for example, in Annex 2 to the Recommendation of the OECD Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions of 26 November 2009.¹¹⁰

The state authorities did not provide any **examples of special programmes for raising awareness** in the private sector on corruption risks and methods for fighting corruption, which would be organized by the state authorities independently or together with the private sector organizations. Also in the newly approved Sectoral Programme for the Fight against Corruption in the Republic of Kazakhstan for 2011-2015 there are no provisions on organising similar programmes or any other measures aimed at engaging the private sector in the anti-corruption activities.

A positive development is establishment and functioning of **expert councils on entrepreneurship** at all state authorities in accordance with the Law on Private Entrepreneurship. These councils are consultative and advisory bodies, which provide expert opinions on draft legal acts affecting interests of private entrepreneurs, participate in elaboration of proposals on improving activities of state authorities in order to support and protect private entrepreneurship, in particular, on elimination of administrative barriers. The Law sets detailed procedures for consultations with the mentioned councils, which may serve as a model for regulation of activities of similar institutions at the state authorities. For example, one of the biggest associations of entrepreneurs of Kazakhstan – National Economic Chamber "Soyuz-Atameken" – provides around 5,000 opinions on draft legal acts per year. At the same time representatives of entrepreneurial unions note the formal nature of certain consultations and frequent unjustified refusals to take into account proposals of entrepreneurs. Although in accordance with Article 5, paragraph 5, of the Law "On Private Entrepreneurship" in case of disagreement with expert opinion the state body sends to the union of private entrepreneurs a response with the justified reasons for disagreement, this progressive provision is not complied with in practice and responses are sent on average to 1/10th of all opinions. Also members of expert councils are provided with little time, which is not sufficient for preparation of detailed proposals. It is necessary to conduct a monitoring of expert councils' work in order to introduce necessary normative changes or correct improper practice, and also to have a dialogue on these issues with the private sector organizations on the national and local levels. It is also recommended to consider broadening the sphere of activities of these councils to include issues of prevention and combating corruption both in public and private sectors.

New Recommendation 3.9.

- **To consider legislative and other measures for establishing proper systems of reporting, information disclosure, internal and external audit, financial control and ensuring general transparency of activities of national management holdings, national holdings, national**

¹⁰⁹ Source: http://www.samruk-kazyna.kz/page.php?page_id=3765&lang=1&parent_id=15.

¹¹⁰ Source: <http://www.oecd.org/dataoecd/5/51/44884389.pdf>.

development institutes, national holding companies and other similar legal entities.

- **To conduct a monitoring of activities of expert councils at the state authorities and to carry out dialogue with representatives of business organizations regarding introduction of anti-corruption mechanisms in the public and private sectors. To set the minimal term for holding consultations with the business community and the deadline for publication of draft legal acts before their adoption.**
- **To facilitate, in close co-operation with business unions and civil society organisations, promotion and enforcement of internal corporate compliance programmes with due account of the best international practice and standards, in particular, Annex 2 to the OECD Council Recommendation of 26 November 2009.**

Summary Table

	New recommendations	Previous recommendation	Updated rating for previous recommendations			
			Fully	Largely	Partially	Not compliant
Pillar I. Anti-Corruption Policy						
1.1-1.2. Expressed political will and a-c policy documents	✓	1. Strategy, action plan		+		
		2. Monitoring of implementation			+	
1.3. Corruption surveys	✓	8. Corruption surveys		+		
1.4. Public participation	✓	28. Public participation			+	
1.5. Raising awareness, public education	✓	9. Information campaigns and education		+		
1.6. Policy/co-ordination institutions	✓	4. Co-ordination body	+			
1.7. international conventions		10. Ratify the UNCAC	+			
Pillar II. Criminalisation of corruption						
2.1-2.2 Offences and elements of offences	✓	11. Harmonise various types of liability			+	
		12. Corruption offences			+	
		13. Money laundering			+	
		15. Corporate liability	+			
2.3. Definition of public official	✓					
2.4. Sanctions						
2.5. Confiscation		16. Confiscation		+		
2.6. Immunity, statute of limitations	✓	14. Immunity		+		
2.7. International cooperation, MLA	✓	17. MLA	+			
2.8.-2.9. Application, procedure, specialised law-enforcement bodies		5. A-c specialisation of prosecutors		+		
		7. Specialised joint training			+	
		6. Analytical capabilities		+		
2.10. Statistics						
Pillar III. Prevention of corruption						
3.1. A-c prevention body						
3.2. Integrity of public service	✓	19. Recruitment and promotion			+	
		18. Attestation			+	
		23. Conflict of interests		+		
		22. Internal control		+		
		21. Asset declarations				+
		20. Practical guidelines, training of civil servants			+	
		3. Disciplinary councils	+			
		24. Gifts	+			

		26. Liability for false reporting about corruption				+
3.3. Administrative discretion	✓	32. A-c strategy for tax and customs bodies	+			
3.4. Financial control	✓	30. Internal financial control and audit		+		
		31. Accounting Committee	+			
3.5. Public procurement	✓	29. Public procurement		+		
3.6. Access to information	✓	27. Access to information			+	
3.7. Political corruption	✓	34. Party financing			+	
3.8. Judiciary	✓					
3.9. Private sector	✓	33. Audit		+		

Annexes

To consult the below mentioned laws, see the Russian version of the report.

Criminal Code of the Republic of Kazakhstan (extracts)

Code of Administrative Offences of the Republic of Kazakhstan (extracts)

Law of the Republic of Kazakhstan “On the Fight against Corruption”

Law of the Republic of Kazakhstan “On the Civil Service” (extracts)